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PART 600—MAGNUSON–STEVENS ACT PROVISIONS

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AUTHORITY: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

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Subpart A—General

§ 600.5 Purpose and scope.

(a) This part contains general provisions governing the operation of the eight Regional Fishery Management Councils established by the Magnuson-Stevens Act and describes the Secretary's role and responsibilities under the Act. The Councils are institutions created by Federal law and must conform to the uniform standards established by the Secretary in this part.

(b) This part also governs all foreign fishing under the Magnuson-Stevens Act, prescribes procedures for the conduct of preemption hearings under section 306(b) of the Magnuson-Stevens Act, and collects the general provisions common to all domestic fisheries governed by this chapter.

(c) This part also governs fishing capacity reduction programs under the Magnuson-Stevens Act.

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§ 600.10 Definitions.

Unless defined otherwise in other parts of Chapter VI, the terms in this chapter have the following meanings:

Administrator means the Administrator of NOAA (Under Secretary of Commerce for Oceans and Atmosphere) or a designee.

Advisory group means a Scientific and Statistical Committee (SSC), Fishing Industry Advisory Committee (FIAC), or Advisory Panel (AP) established by a Council under the Magnuson-Stevens Act.

Agent, for the purpose of foreign fishing (subpart F), means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner and/or operator of a vessel operating under a permit and of any other vessel of that Nation fishing subject to the jurisdiction of the United States. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with such process.

Aggregate or summary form means confidential data structured in such a way

that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

Albacore means the species *Thunnus alalunga*, or a part thereof.

Allocated species means any species or species group allocated to a foreign nation under § 600.517 for catching by vessels of that Nation.

Allocation means direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.

Allowable chemical means a substance, generally used to immobilize marine life so it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral (as defined at 50 CFR 622.2) and is allowed by Florida or Hawaii or the U.S. Pacific Insular Area for the harvest of tropical fish.

Anadromous species means species of fish that spawn in fresh or estuarine waters of the United States and that migrate to ocean waters.

Angling means fishing for, attempting to fish for, catching or attempting to catch fish by any person (angler) with a hook attached to a line that is hand-held or by rod and reel made for this purpose.

Area of custody means any vessel, building, vehicle, live car, pound, pier or dock facility where fish might be found.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee.

Atlantic tunas means bluefin, albacore, bigeye, skipjack, and yellowfin tunas found in the Atlantic Ocean.

Atlantic Tunas Convention Act means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the USCG to enforce the provisions of the Magnuson-Stevens Act or any other statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Authorized species means any species or species group that a foreign vessel is authorized to retain in a joint venture by a permit issued under Activity Code 4 as described by § 600.501(c).

Bandit gear means vertical hook and line gear with rods that are attached to the vessel when in use. Lines are retrieved by manual, electric, or hydraulic reels.

Barrier net means a small-mesh net used to capture coral reef or coastal pelagic fishes.

Bigeye tuna means the species *Thunnus obesus*, or a part thereof.

Billfish means blue marlin, longbill spearfish, sailfish, or white marlin.

Bluefin tuna means the species *Thunnus thynnus*, or a part thereof.

Blue marlin means the species *Makaira nigricans*, or a part thereof.

Bully net means a circular frame attached at right angles to a pole and supporting a conical bag of webbing.

Buoy gear means fishing gear consisting of a float and one or more lines suspended therefrom. A hook or hooks are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

Carcass means a fish in whole condition or that portion of a fish that has been gilled and/or gutted and the head and some or all fins have been removed, but that is otherwise in whole condition.

Cast net means a circular net with weights attached to the perimeter.

Catch limit means the total allowable harvest or take from a single fishing trip or day, as defined in this section.

Catch, take, or *harvest* includes, but is not limited to, any activity that results in killing any fish or bringing any live fish on board a vessel.

Center means one of the five NMFS Fisheries Science Centers.

Charter boat means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire.

Coast Guard Commander means one of the commanding officers of the Coast

Guard units specified in Table 1 of § 600.502, or a designee.

Codend means the terminal, closed end of a trawl net.

Confidential statistics are those submitted as a requirement of an FMP and that reveal the business or identity of the submitter.

Continental shelf fishery resources means the species listed under section 3(7) of the Magnuson-Stevens Act.

Council means one of the eight Regional Fishery Management Councils established by the Magnuson-Stevens Act.

Data, statistics, and *information* are used interchangeably.

Dealer means the person who first receives fish by way of purchase, barter, or trade.

Designated representative means the person appointed by a foreign nation and maintained within the United States who is responsible for transmitting information to and submitting reports from vessels of that Nation and establishing observer transfer arrangements for vessels in both directed and joint venture activities.

Dip net means a small mesh bag, sometimes attached to a handle, shaped and framed in various ways. It is operated by hand or partially by mechanical power to capture the fish.

Directed fishing, for the purpose of foreign fishing (subpart F), means any fishing by the vessels of a foreign nation for allocations of fish granted that Nation under § 600.517.

Director means the Director of the Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

Discard means to release or return fish to the sea, whether or not such fish are brought fully on board a fishing vessel.

Dredge means a gear consisting of a mouth frame attached to a holding bag constructed of metal rings or mesh.

Drop net means a small, usually circular net with weight around the perimeter and a float in the center.

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: *Waters* include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; *substrate* includes sediment, hard bottom, structures underlying the waters, and associated biological communities; *necessary* means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and ''spawning, breeding, feeding, or growth to maturity'' covers a species' full life cycle.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, 3 CFR part 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles (370.40 km) from the baseline from which the territorial sea of the United States is measured.

Exempted educational activity means an activity, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by part 285 or chapter VI of this title, but that is authorized by the appropriate Director or Regional Administrator for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by part 285 or chapter VI of this title, but that are authorized under an exempted fishing permit (EFP). These regulations refer exclusively to exempted fishing. References in part 285 of this title and elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

Fillet means to remove slices of fish flesh from the carcass by cuts made parallel to the backbone.

Fish means:

(1) When used as a noun, means any finfish, mollusk, crustacean, or parts thereof, and all other forms of marine animal and plant life other than marine mammals and birds.

(2) When used as a verb, means to engage in ''fishing,'' as defined below.

Fishery means:

(1) One or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or

(2) Any fishing for such stocks.

Fishery management unit (FMU) means a fishery or that portion of a fishery identified in an FMP relevant to the FMP's management objectives. The choice of an FMU depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing, or *to fish* means any activity, other than scientific research conducted by a scientific research vessel, that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fish weir means a large catching arrangement with a collecting chamber that is made of non-textile material (wood, wicker) instead of netting as in a pound net.

Foreign fishing means fishing by a foreign fishing vessel.

Foreign fishing vessel (FFV) means any fishing vessel other than a vessel of the United States, except those foreign vessels engaged in recreational fishing, as defined in this section.

Gear conflict means any incident at sea involving one or more fishing vessels:

(1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel; and

(2) That results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

Governing International Fishery Agreement (GIFA) means an agreement between the United States and a foreign nation or Nations under section 201(c) of the Magnuson-Stevens Act.

Grants Officer means the NOAA official authorized to sign, on behalf of the Government, the cooperative agreement providing funds to support the Council's operations and functions.

Greenwich mean time (GMT) means the local mean time at Greenwich, England. All times in this part are GMT unless otherwise specified.

Handgear means handline, harpoon, or rod and reel.

Hand harvest means harvesting by hand.

Handline means fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.

Harass means to unreasonably interfere with an individual's work performance, or to engage in conduct that creates an intimidating, hostile, or offensive environment.

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length, the other end of which is attached to a floatation device. Harpoon gear is attached to a pole or stick that is propelled only by hand, and not by mechanical means.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

Hook and line means one or more hooks attached to one or more lines (can include a troll).

Hoop net means a cone-shaped or flat net which may or may not have throats and flues stretched over a series of rings or hoops for support.

Industry means both recreational and commercial fishing, and includes the harvesting, processing, and marketing sectors.

International radio call sign (IRCS) means the unique radio identifier assigned a vessel by the appropriate authority of the flag state.

Joint venture means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. (A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.)

Lampara net means a surround net with the sections of netting made and joined to create bagging. It is hauled with purse rings and is generally much smaller in size than a purse seine net.

Land means to begin offloading fish, to offload fish, or to arrive in port or at a dock, berth, beach, seawall, or ramp.

Longbill spearfish means the species *Tetrapturus pfluegeri*, or a part thereof.

Longline means a line that is deployed horizontally and to which gangions and hooks or pots are attached. Longlines can be stationary, anchored, or buoyed lines that may be hauled manually, electrically, or hydraulically.

Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), formerly known as the Magnuson Act.

Metric ton (mt) means 1,000 kg (2,204.6 lb).

nm means nautical mile (6,076 ft (1,852 m)).

Official number means the documentation number issued by the USCG or the certificate number issued by a state or by the USCG for an undocumented vessel.

Operator, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Optimum yield (OY) means the amount of fish that:

(1) Will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(2) Is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

(3) In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by a person described in paragraph (1), (2), or (3) of this definition.

Plan Team means a Council working group selected from agencies, institutions, and organizations having a role in the research and/or management of fisheries, whose primary purpose is to assist the Council in the preparation and/or review of FMPs, amendments, and supporting documents for the Council, and/or SSC and AP.

Postmark means independently verifiable evidence of the date of mailing, such as a U.S. Postal Service postmark, or other private carrier postmark, certified mail receipt, overnight mail receipt, or a receipt issued upon hand delivery to a representative of NMFS authorized to collect fishery statistics.

Pot means trap.

Powerhead means any device with an explosive charge, usually attached to a spear gun, spear, pole, or stick, that may or may not fire a projectile upon contact.

Predominately means, with respect to fishing in a fishery, that more fishing on a stock or stocks of fish covered by the FMP occurs, or would occur in the

absence of regulations, within or beyond the EEZ than occurs in the aggregate within the boundaries of all states off the coasts of which the fishery is conducted.

Processing, for the purpose of foreign fishing (subpart F), means any operation by an FFV to receive fish from foreign or U.S. fishing vessels and/or the preparation of fish, including, but not limited to, cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the FFV's behalf or to assist other foreign or U.S. fishing vessels.

Product recovery rate (PRR) means a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

Prohibited species, with respect to a foreign vessel, means any species of fish that that vessel is not specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization.

Purchase means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

Purse seine means a floated and weighted encircling net that is closed by means of a drawstring threaded through rings attached to the bottom of the net.

Recreational fishing, with respect to a foreign vessel, means any fishing from a foreign vessel not operated for profit and not operated for the purpose of scientific research. It may not involve the sale, barter, or trade of part or all of the catch (see § 600.513).

Retain on board means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Region mean one of five NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical regions.

Regional Administrator means the Administrator of one of the five NMFS Regions described in Table 1 of § 600.502, or a designee. Formerly known as Regional Director.

Regional Program Officer means the NMFS official designated in the terms and conditions of the grant award responsible for monitoring, recommending, and reviewing any technical aspects of the application for Federal assistance and the award.

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

Round means a whole fish—one that has not been gilled, gutted, beheaded, or definned.

Round weight means the weight of the whole fish before processing or removal of any part.

Sailfish means the species *Istiophorus platypterus,* or a part thereof.

Sale or *sell* means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

Science and Research Director means the Director of one of the five NMFS Fisheries Science Centers described in Table 1 of § 600.502 of this part, or a designee, also known as Center Director.

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson-Stevens Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration,

recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish or invertebrates for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

Scientific research plan means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

(1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.

(2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used, and a description of sampling equipment.

(3) The geographical area(s) in which the project is to be conducted.

(4) The expected date of first appearance and final departure of the research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, and telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used including, but not limited to, the vessel's name, official documentation number and IRCS, home port, and name, address, and telephone number of the owner and master.

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in accordance with a scientific research plan.

Scouting means any operation by a vessel exploring (on the behalf of an FFV or U.S. fishing vessel) for the presence of fish by visual, acoustic, or other means that do not involve the catching of fish.

Secretary means the Secretary of Commerce or a designee.

Seine means a net with long narrow wings, that is rigged with floats and weights.

Skipjack tuna means the species *Katsuwonus pelamis*, or a part thereof.

Slurp gun means a tube-shaped suction device that operates somewhat like a syringe by sucking up the fish.

Snare means a device consisting of a pole to which is attached a line forming at its end a loop with a running knot that tightens around the fish when the line is pulled.

Spear means a sharp, pointed, or barbed instrument on a shaft. Spears can be operated manually or shot from a gun or sling.

State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

State employee means any employee of the state agency responsible for developing and monitoring the state's program for marine and/or anadromous fisheries.

Statement of Organization, Practices, and Procedures (SOPP) means a statement by each Council describing its organization, practices, and procedures as required under section 302(f)(6) of the Magnuson-Stevens Act.

Stock assessment means the process of collecting and analyzing biological and statistical information to determine the changes in the abundance of fishery stocks in response to fishing, and, to the extent possible, to predict future trends of stock abundance. Stock assessments are based on resource surveys; knowledge of the habitat requirements, life history, and behavior of the species; the use of environmental indices to determine impacts on stocks; and catch statistics. Stock assessments are used as a basis to ''assess and specify the present and probable future condition of a fishery'' (as is required by the Magnuson-Stevens Act), and are summarized in the Stock Assessment and Fishery Evaluation or similar document.

Stock Assessment and Fishery Evaluation (SAFE) means a document or set of documents that provides Councils with a summary of the most recent biological condition of species in an FMU, and the social and economic condition of the recreational and commercial fishing industries and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

Submersible means a manned or unmanned device that functions or operates primarily underwater and is used to harvest fish, i.e., precious corals, with mechanical arms.

Substantially (affects) means, for the purpose of subpart G, with respect to whether a state's action or omission will substantially affect the carrying out of an FMP for a fishery, that those effects are important or material, or considerable in degree. The effects of a state's action or omission for purposes of this definition include effects upon:

(1) The achievement of the FMP's goals or objectives for the fishery;

(2) The achievement of OY from the fishery on a continuing basis;

(3) The attainment of the national standards for fishery conservation and management (as set forth in section 301(a) of the Magnuson-Stevens Act) and compliance with other applicable law; or

(4) The enforcement of regulations implementing the FMP.

Support means any operation by a vessel assisting fishing by foreign or U.S. vessels, including supplying water, fuel, provisions, fish processing equipment, or other supplies to a fishing vessel.

Swordfish means the species *Xiphias gladius*, or a part thereof.

Tangle net dredge means dredge gear consisting of weights and flimsy netting that hangs loosely in order to immediately entangle fish.

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

Trammel net means a net consisting of two or more panels of netting, suspended vertically in the water column by a common float line and a common weight line. One panel of netting has a larger mesh size than the other(s) in order to entrap fish in a pocket.

Transship means offloading and onloading or otherwise transferring fish or fish products and/or transporting fish or products made from fish.

Trap means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats. Also called a pot.

Trawl means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that is towed simultaneously by two boats.

Trip means the time period that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp, or port to carry out fishing operations and that terminates with a return to a dock, berth, beach, seawall, ramp, or port.

U.S. observer or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

Vessel of the United States or U.S. vessel means:

(1) Any vessel documented under chapter 121 of title 46, United States Code;

(2) Any vessel numbered under chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(3) Any vessel numbered under chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(4) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

White marlin means the species *Tetrapturus albidus*, or a part thereof.

Yellowfin tuna means the species *Thunnus albacares*, or a part thereof.

[61 FR 32540, June 24, 1996, as amended at 62 FR 14646, Mar. 27, 1997; 62 FR 66551, Dec. 19, 1997; 63 FR 7073, 7075, Feb. 12, 1998; 64 FR 4036, Jan. 27, 1999; 64 FR 29133, May 28, 1999; 64 FR 67516, Dec. 2, 1999]

§ 600.15 Other acronyms.

(a) *Fishery management terms.* (1) ABC—acceptable biological catch

(2) *ATCA*–Atlantic Tunas Convention Act

(3) *BFT* (Atlantic bluefin tuna) means the subspecies of bluefin tuna, *Thunnus thynnus thynnus*, or a part thereof, that occurs in the Atlantic Ocean.

(4) *BSD* means the ICCAT bluefin tuna statistical document.

(5) DAH—estimated domestic annual harvest

(6) DAP—estimated domestic annual processing

(7) EIS—environmental impact statement

(8) EY—equilibrium yield

(9) FMP—fishery management plan

(10) *ICCAT* means the International Commission for the Conservation of Atlantic Tunas.

(11) JVP—joint venture processing

(12) MSY—maximum sustainable yield

(13) PMP—preliminary FMP

(14) TAC—total allowable catch

(15) TALFF—total allowable level of foreign fishing

(b) *Legislation.* (1) APA—Administrative Procedure Act

(2) CZMA—Coastal Zone Management Act

(3) ESA—Endangered Species Act

(4) FACA—Federal Advisory Committee Act

(5) FOIA—Freedom of Information Act

(6) FLSA—Fair Labor Standards Act

(7) MMPA—Marine Mammal Protection Act

(8) MPRSA—Marine Protection, Research, and Sanctuaries Act

(9) NEPA—National Environmental Policy Act

(10) PA—Privacy Act

(11) PRA—Paperwork Reduction Act

(12) RFA—Regulatory Flexibility Act

(c) *Federal agencies.* (1) CEQ—Council on Environmental Quality

(2) DOC—Department of Commerce

(3) DOI—Department of the Interior

(4) DOS—Department of State

(5) EPA—Environmental Protection Agency

(6) FWS—Fish and Wildlife Service

(7) GSA—General Services Administration

(8) NMFS—National Marine Fisheries Service

(9) NOAA—National Oceanic and Atmospheric Administration

(10) OMB—Office of Management and Budget

(11) OPM—Office of Personnel Management

(12) SBA—Small Business Administration

(13) USCG—United States Coast Guard

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998; 64 FR 29134, May 28, 1999]

Subpart B—Regional Fishery Management Councils

§ 600.105 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Councils.* The boundary begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18′16.249″ N. lat. and 71°54′28.477″ W. long. and proceeds south 37°22′32.75″ East to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson-Stevens Act.

(b) *Mid-Atlantic and South Atlantic Councils.* The boundary begins at the seaward boundary between the States of Virginia and North Carolina (36°31′00.8″ N. lat.), and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson-Stevens Act.

(c) *South Atlantic and Gulf of Mexico Councils.* The boundary coincides with the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, which begins at the intersection of the outer boundary of the EEZ, as specified in the Magnuson-Stevens Act, and 83°00′ W. long., proceeds northward along that meridian to 24°35′ N. lat., (near the Dry Tortugas Islands), thence eastward along that parallel, through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.110 Intercouncil fisheries.

If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(a) Designate a single Council to prepare the FMP for such fishery and any amendments to such FMP, in consultation with the other Councils concerned; or

(b) Require that the FMP and any amendments be prepared jointly by all the Councils concerned.

(1) A jointly prepared FMP or amendment must be adopted by a majority of the voting members, present and voting, of each participating Council. Different conservation and management measures may be developed for specific geographic areas, but the FMP should address the entire geographic range of the stock(s).

(2) In the case of joint FMP or amendment preparation, one Council will be designated as the ''administrative lead.'' The ''administrative lead'' Council is responsible for the preparation of the FMP or any amendments and other required documents for submission to the Secretary.

(3) None of the Councils involved in joint preparation may withdraw without Secretarial approval. If Councils cannot agree on approach or management measures within a reasonable period of time, the Secretary may designate a single Council to prepare the FMP or may issue the FMP under Secretarial authority.

§ 600.115 Statement of organization, practices, and procedures (SOPP).

(a) Councils are required to publish and make available to the public a SOPP in accordance with such uniform standards as are prescribed by the Secretary (section 302(f)(6)) of the Magnuson-Stevens Act. The purpose of the SOPP is to inform the public how the Council operates within the framework of the Secretary's uniform standards.

(b) Amendments to current SOPPs must be consistent with the guidelines in this section and the terms and conditions of the cooperative agreement, the statutory requirements of the Magnuson-Stevens Act and other applicable law. Upon approval of a Council's SOPP amendment by the Secretary, a Notice of Availability will be published in the FEDERAL REGISTER, including an address where the public may write to request copies.

(c) Councils may deviate, where lawful, from the guidelines with appropriate supporting rationale, and Secretarial approval of each amendment to a SOPP would constitute approval of any such deviations for that particular Council.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.120 Employment practices.

Council members (except for Federal Government officials) and staff are not Federal employees subject to OPM regulations. Council staffing practices are set forth in each Council's SOPP.

§ 600.125 Budgeting, funding, and accounting.

Each Council's grant activities are governed by OMB Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals,

and other Non-Profit Organizations), OMB Circular A–122 (Cost Principles for Non-Profit Organizations), 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations), and the terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

§ 600.130 Protection of confidentiality of statistics.

Each Council must establish appropriate procedures for ensuring the confidentiality of the statistics that may be submitted to it by Federal or state authorities and may be voluntarily submitted to it by private persons, including, but not limited to (also see § 600.405):

(a) Procedures for the restriction of Council member, employee, or advisory group access and the prevention of conflicts of interest, except that such procedures must be consistent with procedures of the Secretary.

(b) In the case of statistics submitted to the Council by a state, the confidentiality laws and regulations of that state.

Subpart C—Council Membership

§ 600.205 Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be designated by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson-Stevens Act. New or revised designations by state Governors of principal state officials, and new or revised designations by principal state officials of their designees(s), must be delivered in writing to the appropriate NMFS Regional Administrator at least 48 hours before the individual may vote on any issue before the Council. Written designation(s) must indicate the employment status of each principal state official and that of his/her designee(s), how the official or designee is employed by the state fisheries agency, where each individual is employed (business address and telephone number), and whether the official's full salary is paid by the state.

(b) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to section 302(b)(1)(A) of the Magnuson-Stevens Act, must be full time state employees involved in the development of fisheries management policies for that state.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.210 Terms of Council members.

(a) Voting members (other than principal state officials, the Regional Administrators, or their designees) are appointed for a term of 3 years and, except as discussed in paragraphs (b) and (c) of this section, may be reappointed. A voting member's Council service of 18 months or more during a term of office will be counted as service for the entire 3-year term.

(b) The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than 3 years, if necessary, to provide for balanced expiration of terms of office. Members may not serve more than three consecutive terms.

(c) A member appointed after January 1, 1986, who has completed three consecutive terms will be eligible for appointment to another term one full year after completion of the third consecutive term.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998]

§ 600.215 Council nomination and appointment procedures.

(a) *General.* (1) Each year, the 3-year terms for approximately one-third of the appointed members of the Councils expire. The Secretary of Commerce (Secretary) will appoint or new members or will reappoint seated members to another term to fill the seats being vacated.

(2) There are two categories of seats to which voting members are appointed: ''Obligatory'' and ''At-large.''

(i) Obligatory seats are state specific. Each constituent state is entitled to one seat on the Council on which it is

a member, except that the State of Alaska is entitled to five seats and the State of Washington is entitled to two seats on the North Pacific Fishery Management Council. When the term of a state's obligatory member is expiring or when that seat becomes vacant before the expiration of its term, the governor of that state must submit the names of at least three qualified individuals to fill that Council seat.

(ii) The Magnuson-Stevens Act also provides for appointment, by the Secretary, of one treaty Indian tribal representative to the Pacific Fishery Management Council (Pacific Council). To fill that seat, the Secretary solicits written nominations from the heads of governments of those Indian Tribes with federally recognized fishing rights from the States of California, Oregon, Washington, or Idaho. The list of nominees must contain a total of at least three individuals who are knowledgeable and experienced regarding the fishery resources under the authority of the Pacific Council. The Secretary will appoint one tribal Indian representative from this list to the Pacific Council for a term of 3 years and rotate the appointment among the tribes.

(iii) At-large seats are regional. When the term of an at-large member is expiring or when that seat becomes vacant before the expiration of a term, the governors of all constituent states of that Council must each submit the names of at least three qualified individuals to fill the seat.

(b) *Responsibilities of State Governors.* (1) Council members are selected by the Secretary from lists of nominees submitted by Governors of the constituent states, pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act. For each applicable vacancy, a Governor must submit the names of at least three nominees who meet the qualification requirements of the Magnuson-Stevens Act. A Governor must provide a statement explaining how each of his/her nominees meet the qualification requirements, and must also provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests of that state and that each nominee is knowledgeable and experienced by reason of his or her occupational or other experience, scientific expertise, or training in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(i) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(ii) Fishing for pleasure, relaxation, or consumption, or experience in any business supporting fishing;

(iii) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(iv) The management and conservation of natural resources, including related interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(v) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of consumers of marine resources; or

(vi) Teaching, journalism, writing, consulting, practicing law, or researching matters related to fisheries, fishery management, and marine resource conservation.

(2) To assist in identifying qualifications, each nominee must furnish to the appropriate governor's office a current resume, or equivalent, describing career history—with particular attention to experience related to the criteria in paragraph (b)(1) of this section. Nominees may provide such information in any format they wish.

(3) A constituent State Governor must determine the state of residency of each of his/her nominees. A Governor may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. A Governor may nominate residents of another constituent state of a Council for appointment to an at large seat on that Council.

(4) If, at any time during a term, a member changes residency to another state that is not a constituent state of

that Council, or a member appointed to an obligatory seat changes residency to any other state, the member may no longer vote and must resign from the Council. For purposes of this paragraph, a state resident is an individual who maintains his/her principal residence within that constituent state and who, if applicable, pays income taxes to that state and/or to another appropriate jurisdiction within that state.

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat, provided that the resulting total number of nominees submitted by that governor for the expiring at-large seat is no fewer than three different nominees. When obligatory and at-large seats do not expire concurrently, the Secretary may select from any of the nominees for such obligatory seat and from the nominees for any at-large seat submitted by the Governor of that state, provided that the resulting total number of nominees submitted by that Governor for the expiring seats is no fewer than six. If a total of fewer than six nominees is submitted by the Governor, each of the six will be considered for the expiring obligatory seat, but not for the expiring at-large seat.

(c) *Responsibilities of eligible tribal Indian governments.* The tribal Indian representative on the Pacific Council will be selected by the Secretary from a list of no fewer than three individuals submitted by the tribal Indian governments with federally recognized fishing rights from California, Oregon, Washington, and Idaho, pursuant to section 302(b)(5) of the Magnuson-Stevens Act. To assist in assessing the qualifications of each nominee, each head of an appropriate tribal Indian government must furnish to the Assistant Administrator a current resume, or equivalent, describing the nominee's qualifications, with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Pacific Council in a different capacity will not disqualify nominees proposed by tribal Indian governments.

(d) *Nomination deadlines.* Nomination letters and completed kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15. For appointments outside the normal cycle, a different deadline for receipt of nominations will be announced.

(1) *Obligatory seats.* (i) The governor of the state for which the term of an obligatory seat is expiring must submit the names of at least three qualified individuals to fill that seat by the March 15 deadline. The Secretary will appoint to the Pacific Council a representative of an Indian tribe from a list of no fewer than three individuals submitted by the tribal Indian governments.

(ii) If the nominator fails to provide a nomination letter and at least three complete nomination kits by March 15, the obligatory seat will remain vacant until all required information has been received and processed and the Secretary has made the appointment.

(2) *At-large seats.* (i) If a Governor chooses to submit nominations for an at-large seat, he/she must submit lists that contain at least three different qualified nominees for each vacant seat. A nomination letter and at least three complete nomination kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15.

(ii) Nomination packages that are incomplete after March 15 will be returned to the nominating Governor and will be processed no further. At-large members will be appointed from among the nominations submitted by the governors who complied with the nomination requirements and the March 15 deadline.

(e) *Responsibilities of the Secretary.* (1) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that

those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members on the Councils.

(2) The Secretary will review each list submitted by a governor or the tribal Indian governments to ascertain whether the individuals on the list are qualified for the vacancy. If the Secretary determines that a nominee is not qualified, the Secretary will notify the appropriate Governor or tribal Indian government of that determination. The Governor or tribal Indian government shall then submit a revised list of nominees or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(3) The Secretary will select the appointees from lists of qualified nominees provided by the Governors of the constituent Council states or of the tribal Indian governments that are eligible to nominate candidates for that vacancy.

(i) For Governor-nominated seats, the Secretary will select an appointee for an obligatory seat from the list of qualified nominees submitted by the governor of the state. In filling expiring at-large seats, the Secretary will select an appointee(s) for an at-large seat(s) from the list of all qualified candidates submitted. The Secretary will consider only complete slates of nominees submitted by the governors of the Council's constituent states. When an appointed member vacates his/her seat prior to the expiration of his/her term, the Secretary will fill the vacancy for the remainder of the term by selecting from complete nomination letters and kits that are timely and contain the required number of candidates.

(ii) For the tribal Indian seat, the Secretary will solicit nominations of individuals for the list referred to in paragraph (c) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations. Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described in paragraphs (d)(1) and (2) of this section, except that the Secretary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen. The Secretary shall rotate the appointment among the tribes, taking into consideration:

(A) The qualifications of the individuals on the list referred to in paragraph (c) of this section.

(B) The various rights of the Indian tribes involved, and judicial cases that set out the manner in which these rights are to be exercised.

(C) The geographic area in which the tribe of the representative is located.

(D) The limitation that no tribal Indian representative shall serve more than three consecutive terms in the Indian tribal seat.

[64 FR 4600, Jan. 29, 1999]

§ 600.220 Oath of office.

Each member appointed to a Council must take an oath of office.

§ 600.225 Rules of conduct.

(a) Council members, as Federal office holders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds.

(b) The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Councils must comply with the following standards of conduct:

(1) No employee of a Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

(2) No employee of a Council may be deprived of employment, position,

work, compensation, or benefit provided for or made possible by the Magnuson-Stevens Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

(3) No Council member or employee may pay, offer, promise, solicit, or receive from any person, firm, or corporation a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support or influence in obtaining for any person any appointive office, place, or employment under the Council.

(4) No employee of a Council may have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties.

(5) No Council member, employee of a Council, or member of a Council advisory group may use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(6) No Council member or employee of the Council may engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

(7) No Council member or employee of the Council may use Council property on other than official business. Such property must be protected and preserved from improper or deleterious operation or use.

(8)(i) Except as provided in § 600.235(h) or in 18 U.S.C. 208, no Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter in which the member, the member's spouse, minor child, general partner, organization in which the member is serving as officer, director, trustee, general partner, or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment, has a financial interest. (Note that this financial interest is broader than the one defined in § 600.235(a).)

(ii) No Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest, even if the interest has been disclosed in accordance with § 600.235.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 63 FR 64185, Nov. 19, 1998]

§ 600.230 Removal.

The Secretary may remove for cause any Secretarially appointed member of a Council in accordance with section 302(b)(6) of the Magnuson-Stevens Act, wherein the Council concerned first recommends removal of that member by not less than two-thirds of the voting members. A recommendation of a Council to remove a member must be made in writing to the Secretary and accompanied by a statement of the reasons upon which the recommendation is based.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998]

§ 600.235 Financial disclosure.

(a) *Definitions.* For purposes of § 600.235:

Affected individual means an individual who is—

(1) Nominated by the Governor of a state or appointed by the Secretary of Commerce to serve as a voting member of a Council in accordance with section 302(b)(2) of the Magnuson-Stevens Act; or

(2) A representative of an Indian tribe appointed to the Pacific Council by the Secretary of Commerce under section 302(b)(5) of the Magnuson-Stevens Act who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government.

Council decision means approval of a fishery management plan (FMP) or FMP amendment (including any proposed regulations); request for amendment to regulations implementing an

FMP; finding that an emergency exists involving any fishery (including recommendations for responding to the emergency); and comments to the Secretary on FMPs or amendments developed by the Secretary. It does not include a vote by a committee of a Council.

Designated official means an attorney designated by the NOAA General Counsel.

Financial interest in harvesting, processing, or marketing (1) includes:

(i) Stock, equity, or other ownership interests in, or employment with, any company, business, fishing vessel, or other entity engaging in any harvesting, processing, or marketing activity in any fishery under the jurisdiction of the Council concerned;

(ii) Stock, equity, or other ownership interests in, or employment with, any company or other entity that provides equipment or other services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned, such as a chandler or a dock operation.

(iii) Employment with, or service as an officer, director, or trustee of, an association whose members include companies, vessels, or other entities engaged in harvesting, processing, or marketing activities, or companies or other entities providing services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned; and

(iv) Employment with an entity providing consulting, legal, or representational services to any entity engaging in, or providing equipment or services essential to, harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned, or to any association whose members include entities engaged in the activities described in paragraphs (1) (i) and (ii) of this definition;

(2) Does not include stock, equity, or other ownership interests in, or employment with, an entity engaging in advocacy on environmental issues or in scientific fisheries research in any fishery under the jurisdiction of the Council concerned, unless it is covered under paragraph (1) of this definition. A financial interest in such entities is covered by 18 U.S.C. 208, the Federal conflict-of-interest statute.

(b) *Reporting.* (1) The Magnuson-Stevens Act requires the disclosure by each affected individual of any financial interest in harvesting, processing, or marketing activity, and of any such financial interest of the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88–195, ''Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils'' (Financial Interest Form), or such other form as the Secretary may prescribe.

(2) The Financial Interest Form must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary must file a Financial Interest Form with the Executive Director of the appropriate Council within 45 days of taking office; must file an update of his or her statement with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed by the affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Executive Director of the appropriate Council by February 1 of each year.

(3) The Executive Director must, in a timely manner, provide copies of the financial disclosure forms and all updates to the NMFS Regional Administrator for the geographic area concerned, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel for Administration, and the NMFS Office of Sustainable Fisheries. The completed financial interest forms will be kept on file in the office of the NMFS

Regional Administrator for the geographic area concerned and at the Council offices, and will be made available for public inspection at such offices during normal office hours. In addition, the forms will be made available at each Council meeting or hearing.

(4) Councils must retain the disclosure form for each affected individual for at least 5 years after the expiration of that individual's last term.

(c) *Restrictions on voting.* (1) No affected individual may vote on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his/her report filed under paragraph (b) of this section.

(2) As used in this section, a Council decision will be considered to have a ''significant and predictable effect on a financial interest'' if there is a close causal link between the decision and an expected and substantially disproportionate benefit to the financial interest in harvesting, processing, or marketing of any affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, relative to the financial interests of other participants in the same gear type or sector of the fishery. The relative financial interests of the affected individual and other participants will be determined with reference to the most recent fishing year for which information is available. However, for fisheries in which IFQs are assigned, the percentage of IFQs assigned to the affected individual will be dispositive.

(3) ''Expected and substantially disproportionate benefit'' means a quantifiable positive or negative impact with regard to a matter likely to affect a fishery or sector of the fishery in which the affected individual has a significant interest, as indicated by:

(i) A greater than 10-percent interest in the total harvest of the fishery or sector of the fishery in question;

(ii) A greater than 10-percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery in question; or

(iii) Full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery or sector of the fishery in question.

(d) *Voluntary recusal.* An affected individual who believes that a Council decision would have a significant and predictable effect on that individual's financial interest disclosed under paragraph (b) of this section may, at any time before a vote is taken, announce to the Council an intent not to vote on the decision.

(e) *Participation in deliberations.* Notwithstanding paragraph (c) of this section, an affected individual who is recused from voting under this section may participate in Council and committee deliberations relating to the decision, after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(f) *Requests for determination.* (1) At the request of an affected individual, the designated official shall determine for the record whether a Council decision would have a significant and predictable effect on that individual's financial interest. The determination will be based upon a review of the information contained in the individual's financial disclosure form and any other reliable and probative information provided in writing. All information considered will be made part of the public record for the decision. The affected individual may request a determination by notifying the designated official—

(i) Within a reasonable time before the Council meeting at which the Council decision will be made; or

(ii) During a Council meeting before a Council vote on the decision.

(2) The designated official may initiate a determination on the basis of—

(i) His or her knowledge of the fishery and the financial interests disclosed by an affected individual; or

(ii) Written and signed information received within a reasonable time before a Council meeting or, if the issue could not have been anticipated before the meeting, during a Council meeting before a Council vote on the decision.

(3) At the beginning of each Council meeting, or during a Council meeting

at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information.

(4) If the designated official determines that the affected individual may not vote, the individual may state for the record how he or she would have voted. A Council Chair may not allow such an individual to cast a vote.

(5) A reversal of a determination under paragraph (g) of this section may not be treated as cause for invalidation or reconsideration by the Secretary of a Council's decision.

(g) *Review of determinations.* (1) Any Council member may file a written request to the NOAA General Counsel for review of the designated official's determination. A request for review must be received within 10 days of the determination.

(2) A request must include a full statement in support of the review, including a concise statement as to why the Council's decision did or did not have a significantly disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery, and why the designated official's determination should be reversed.

(3) If the request for review is from a Council member other than the affected individual whose vote is at issue, the requester must provide a copy of the request to the affected individual at the same time it is submitted to the NOAA General Counsel. The affected individual may submit a response to the NOAA General Counsel within 10 days from the date of his/her receipt of the request for review.

(4) The NOAA General Counsel must complete the review and issue a decision within 30 days from the date of receipt of the request for review. The NOAA General Counsel will limit the review to the record before the designated official at the time of the determination, the request, and any response.

(h) *Exemption from other statutes.* The provisions of 18 U.S.C. 208 regarding conflicts of interest do not apply to an affected individual who is in compliance with the requirements of this section for filing a financial disclosure report.

(i) *Violations and penalties.* It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required by this section, or to knowingly vote on a Council decision in violation of this section. In addition to the penalties applicable under § 600.735, a violation of this provision may result in removal of the affected individual from Council membership.

[63 FR 64185, Nov. 19, 1998]

§ 600.240 Security assurances.

(a) DOC/OS will issue security assurances to Council nominees and members following completion of background checks. Security assurances will be valid for 5 years from the date of issuance. A security assurance will not entitle the member to access classified data. In instances in which Council members may need to discuss, at closed meetings, materials classified for national security purposes, the agency or individual (e.g., DOS, USCG) providing such classified information will be responsible for ensuring that Council members and other attendees have the appropriate security clearances.

(b) Each nominee to a Council is required to complete a Certification of Status form (''form''). All nominees must certify, pursuant to the Foreign Agents Registration Act of 1938, whether they serve as an agent of a foreign principal. Each nominee must certify, date, sign, and return the form with his or her completed nomination kit. Nominees will not be considered for appointment to a Council if they have not filed this form. Any nominee who currently is an agent of a foreign principal will not be eligible for appointment to a Council, and therefore should not be nominated by a Governor for appointment.

§ 600.245 Council member compensation.

(a) The obligatory and at-large voting members of each Council appointed

under section 302(b)(1)(C) of the Magnuson-Stevens Act who are not employed by the Federal Government or any state or local government (i.e., any member who does not receive compensation from any such government for the period when performing duties as a Council member) shall receive compensation at 1.2 times the daily rate for a GS–15 (Step 1) of the General Schedule (without locality pay) when engaged in actual performance of duties as assigned by the Chair of the Council. Actual performance of duties, for the purposes of compensation, may include travel time.

(b) All voting Council members whose eligibility for compensation has been established in accordance with NOAA guidelines will be paid through the cooperative agreement as a direct line item on a contractual basis without deductions being made for Social Security or Federal and state income taxes. A report of compensation will be furnished each year by the member's Council to the proper Regional Program Officer, as required by the Internal Revenue Service. Such compensation may be paid on a full day's basis, whether in excess of 8 hours a day or less than 8 hours a day. The time is compensable where the individual member is required to expend a significant private effort that substantially disrupts the daily routine to the extent that a work day is lost to the member. ''Homework'' time in preparation for formal Council meetings is not compensable.

(c) Non-government Council members receive compensation for:

(1) Days spent in actual attendance at a meeting of the Council or jointly with another Council.

(2) Travel on the day preceding or following a scheduled meeting that precluded the member from conducting his normal business on the day in question.

(3) Meetings of standing committees of the Council if approved in advance by the Chair.

(4) Individual member meeting with scientific and technical advisors, when approved in advance by the Chair and a substantial portion of any day is spent at the meeting.

(5) Conducting or attending hearings, when authorized in advance by the Chair.

(6) Other meetings involving Council business when approved in advance by the Chair.

(d) The Executive Director of each Council must submit to the appropriate Regional Office annually a report, approved by the Council Chair, of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

Subpart D—National Standards

§ 600.305 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Magnuson-Stevens Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Magnuson-Stevens Act, and other applicable law must be approved.

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish (i.e., the management objectives to be attained in regulating the fishery under consideration). In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

(c) *Word usage.* The word usage refers to all regulations in this subpart.

(1) *Must* is used, instead of ''shall'', to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law.

(2) *Shall* is used only when quoting statutory language directly, to avoid confusion with the future tense.

(3) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

(4) *May* is used in a permissive sense.

(5) *May not* is proscriptive; it has the same force as ''must not.''

(6) *Will* is used descriptively, as distinguished from denoting an obligation to act or the future tense.

(7) *Could* is used when giving examples, in a hypothetical, permissive sense.

(8) *Can* is used to mean ''is able to,'' as distinguished from ''may.''

(9) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(10) *Analysis,* as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(11) *Council* includes the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act.

(12) *Stock or stock complex* is used as a synonym for ''fishery'' in the sense of the Magnuson-Stevens Act's first definition of the term; that is, as ''one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics,'' as distinguished from the Magnuson-Stevens Act's second definition of fishery as ''any fishing for such stocks.''

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 63 FR 24229, May 1, 1998]

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's multiple purposes and policies, implementing an FMP's objectives, and balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be reduced under paragraph (f)(3) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(c) *MSY.* Each FMP should include an estimate of MSY as explained in this section.

(1) *Definitions.* (i) ''MSY'' is the largest long-term average catch or yield

that can be taken from a stock or stock complex under prevailing ecological and environmental conditions.

(ii) ''MSY control rule'' means a harvest strategy which, if implemented, would be expected to result in a long-term average catch approximating MSY.

(iii) ''MSY stock size'' means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate units, that would be achieved under an MSY control rule in which the fishing mortality rate is constant.

(2) *Options in specifying MSY.* (i) Because MSY is a theoretical concept, its estimation in practice is conditional on the choice of an MSY control rule. In choosing an MSY control rule, Councils should be guided by the characteristics of the fishery, the FMP's objectives, and the best scientific information available. The simplest MSY control rule is to remove a constant catch in each year that the estimated stock size exceeds an appropriate lower bound, where this catch is chosen so as to maximize the resulting long-term average yield. Other examples include the following: Remove a constant fraction of the biomass in each year, where this fraction is chosen so as to maximize the resulting long-term average yield; allow a constant level of escapement in each year, where this level is chosen so as to maximize the resulting long-term average yield; vary the fishing mortality rate as a continuous function of stock size, where the parameters of this function are constant and chosen so as to maximize the resulting long-term average yield. In any MSY control rule, a given stock size is associated with a given level of fishing mortality and a given level of potential harvest, where the long-term average of these potential harvests provides an estimate of MSY.

(ii) Any MSY values used in determining OY will necessarily be estimates, and these will typically be associated with some level of uncertainty. Such estimates must be based on the best scientific information available (see § 600.315) and must incorporate appropriate consideration of risk (see § 600.335). Beyond these requirements, however, Councils have a reasonable degree of latitude in determining which estimates to use and how these estimates are to be expressed. For example, a point estimate of MSY may be expressed by itself or together with a confidence interval around that estimate.

(iii) In the case of a mixed-stock fishery, MSY should be specified on a stock-by-stock basis. However, where MSY cannot be specified for each stock, then MSY may be specified on the basis of one or more species as an indicator for the mixed stock as a whole or for the fishery as a whole.

(iv) Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available, and should be re-estimated as required by changes in environmental or ecological conditions or new scientific information.

(3) *Alternatives to specifying MSY.* When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY, to the extent possible. Examples include various reference points defined in terms of relative spawning per recruit. For instance, the fishing mortality rate that reduces the long-term average level of spawning per recruit to 30–40 percent of the long-term average that would be expected in the absence of fishing may be a reasonable proxy for the MSY fishing mortality rate. The long-term average stock size obtained by fishing year after year at this rate under average recruitment may be a reasonable proxy for the MSY stock size, and the long-term average catch so obtained may be a reasonable proxy for MSY. The natural mortality rate may also be a reasonable proxy for the MSY fishing mortality rate. If a reliable estimate of pristine stock size (i.e., the long-term average stock size that would be expected in the absence of fishing) is available, a stock size approximately 40 percent of this value may be a reasonable proxy for the MSY stock size, and the product of this stock size and the natural mortality rate may be a reasonable proxy for MSY.

(d) *Overfishing*—(1) *Definitions.* (i) ''To overfish'' means to fish at a rate or

level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(ii) ''Overfishing'' occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(iii) In the Magnuson-Stevens Act, the term ''overfished'' is used in two senses: First, to describe any stock or stock complex that is subjected to a rate or level of fishing mortality meeting the criterion in paragraph (d)(1)(i) of this section, and second, to describe any stock or stock complex whose size is sufficiently small that a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. To avoid confusion, this section uses ''overfished'' in the second sense only.

(2) *Specification of status determination criteria.* Each FMP must specify, to the extent possible, objective and measurable status determination criteria for each stock or stock complex covered by that FMP and provide an analysis of how the status determination criteria were chosen and how they relate to reproductive potential. Status determination criteria must be expressed in a way that enables the Council and the Secretary to monitor the stock or stock complex and determine annually whether overfishing is occurring and whether the stock or stock complex is overfished. In all cases, status determination criteria must specify both of the following:

(i) *A maximum fishing mortality threshold or reasonable proxy thereof.* The fishing mortality threshold may be expressed either as a single number or as a function of spawning biomass or other measure of productive capacity. The fishing mortality threshold must not exceed the fishing mortality rate or level associated with the relevant MSY control rule. Exceeding the fishing mortality threshold for a period of 1 year or more constitutes overfishing.

(ii) *A minimum stock size threshold or reasonable proxy thereof.* The stock size threshold should be expressed in terms of spawning biomass or other measure of productive capacity. To the extent possible, the stock size threshold should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the maximum fishing mortality threshold specified under paragraph (d)(2)(i) of this section. Should the actual size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(3) *Relationship of status determination criteria to other national standards*—(i) *National standard 2.* Status determination criteria must be based on the best scientific information available (see § 600.315). When data are insufficient to estimate MSY, Councils should base status determination criteria on reasonable proxies thereof to the extent possible (also see paragraph (c)(3) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data.

(ii) *National standard 3.* The requirement to manage interrelated stocks of fish as a unit or in close coordination notwithstanding (see § 600.320), status determination criteria should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see paragraph (c)(2)(iii) of this section).

(iii) *National standard 6.* Councils must build into the status determination criteria appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors (see § 600.335).

(4) *Relationship of status determination criteria to environmental change.* Some short-term environmental changes can alter the current size of a stock or stock complex without affecting the long-term productive capacity of the stock or stock complex. Other environmental changes affect both the current size of the stock or stock complex and the long-term productive capacity of the stock or stock complex.

(i) If environmental changes cause a stock or stock complex to fall below the minimum stock size threshold

without affecting the long-term productive capacity of the stock or stock complex, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (also see paragraph (e)(4)(ii) of this section). Status determination criteria need not be respecified.

(ii) If environmental changes affect the long-term productive capacity of the stock or stock complex, one or more components of the status determination criteria must be respecified. Once status determination criteria have been respecified, fishing mortality may or may not have to be reduced, depending on the status of the stock or stock complex with respect to the new criteria.

(iii) If manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition, in addition to controlling effort, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible (see also the guidelines issued pursuant to section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat).

(5) *Secretarial approval of status determination criteria.* Secretarial approval or disapproval of proposed status determination criteria will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit.

(ii) Contains the elements described in paragraph (d)(2) of this section.

(iii) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria.

(iv) Is operationally feasible.

(6) *Exceptions.* There are certain limited exceptions to the requirement to prevent overfishing. Harvesting one species of a mixed-stock complex at its optimum level may result in the overfishing of another stock component in the complex. A Council may decide to permit this type of overfishing only if all of the following conditions are satisfied:

(i) It is demonstrated by analysis (paragraph (f)(6) of this section) that such action will result in long-term net benefits to the Nation.

(ii) It is demonstrated by analysis that mitigating measures have been considered and that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur.

(iii) The resulting rate or level of fishing mortality will not cause any species or evolutionarily significant unit thereof to require protection under the ESA.

(e) *Ending overfishing and rebuilding overfished stocks*— (1) *Definition.* A threshold, either maximum fishing mortality or minimum stock size, is being ''approached'' whenever it is projected that the threshold will be breached within 2 years, based on trends in fishing effort, fishery resource size, and other appropriate factors.

(2) *Notification.* The Secretary will immediately notify a Council and request that remedial action be taken whenever the Secretary determines that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) The rate or level of fishing mortality for a stock or stock complex is approaching the maximum fishing mortality threshold;

(iv) A stock or stock complex is approaching its minimum stock size threshold; or

(v) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

(3) *Council action.* Within 1 year of such time as the Secretary may identify that overfishing is occurring, that a stock or stock complex is overfished, or that a threshold is being approached, or such time as a Council may be notified of the same under paragraph (e)(2) of this section, the Council must take remedial action by preparing an FMP, FMP amendment, or proposed regulations. This remedial action must be designed to accomplish all of the following purposes that apply:

(i) If overfishing is occurring, the purpose of the action is to end overfishing.

(ii) If the stock or stock complex is overfished, the purpose of the action is to rebuild the stock or stock complex to the MSY level within an appropriate time frame.

(iii) If the rate or level of fishing mortality is approaching the maximum fishing mortality threshold (from below), the purpose of the action is to prevent this threshold from being reached.

(iv) If the stock or stock complex is approaching the minimum stock size threshold (from above), the purpose of the action is to prevent this threshold from being reached.

(4) *Constraints on Council action*. (i) In cases where overfishing is occurring, Council action must be sufficient to end overfishing.

(ii) In cases where a stock or stock complex is overfished, Council action must specify a time period for rebuilding the stock or stock complex that satisfies the requirements of section 304(e)(4)(A) of the Magnuson-Stevens Act.

(A) A number of factors enter into the specification of the time period for rebuilding:

(*1*) The status and biology of the stock or stock complex;

(*2*) Interactions between the stock or stock complex and other components of the marine ecosystem (also referred to as ''other environmental conditions'');

(*3*) The needs of fishing communities;

(*4*) Recommendations by international organizations in which the United States participates; and

(*5*) Management measures under an international agreement in which the United States participates.

(B) These factors enter into the specification of the time period for rebuilding as follows:

(*1*) The lower limit of the specified time period for rebuilding is determined by the status and biology of the stock or stock complex and its interactions with other components of the marine ecosystem, and is defined as the amount of time that would be required for rebuilding if fishing mortality were eliminated entirely.

(*2*) If the lower limit is less than 10 years, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can result in the specified time period exceeding 10 years, unless management measures under an international agreement in which the United States participates dictate otherwise.

(*3*) If the lower limit is 10 years or greater, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics. For example, suppose a stock could be rebuilt within 12 years in the absence of any fishing mortality, and has a mean generation time of 8 years. The rebuilding period, in this case, could be as long as 20 years.

(C) A rebuilding program undertaken after May 1, 1998 commences as soon as the first measures to rebuild the stock or stock complex are implemented.

(D) In the case of rebuilding plans that were already in place as of May 1, 1998, such rebuilding plans must be reviewed to determine whether they are in compliance with all requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act.

(iii) For fisheries managed under an international agreement, Council action must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) *Interim measures.* The Secretary, on his/her own initiative or in response to a Council request, may implement interim measures to reduce overfishing under section 305(c) of the Magnuson-Stevens Act, until such measures can be replaced by an FMP, FMP amendment, or regulations taking remedial action.

(i) These measures may remain in effect for no more than 180 days, but may be extended for an additional 180 days if the public has had an opportunity to comment on the measures and, in the

case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address overfishing on a permanent basis. Such measures, if otherwise in compliance with the provisions of the Magnuson-Stevens Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(ii) If interim measures are made effective without prior notice and opportunity for comment, they should be reserved for exceptional situations, because they affect fishermen without providing the usual procedural safeguards. A Council recommendation for interim measures without notice-and-comment rulemaking will be considered favorably if the short-term benefits of the measures in reducing overfishing outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants in the fishery.

(f) *OY*—(1) *Definitions.* (i) The term ''optimum,'' with respect to the yield from a fishery, means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery.

(ii) In national standard 1, use of the phrase ''achieving, on a continuing basis, the OY from each fishery'' means producing, from each fishery, a long-term series of catches such that the average catch is equal to the average OY and such that status determination criteria are met.

(2) *Values in determination.* In determining the greatest benefit to the Nation, these values that should be weighed are food production, recreational opportunities, and protection afforded to marine ecosystems. They should receive serious attention when considering the economic, social, or ecological factors used in reducing MSY to obtain OY.

(i) The benefits of food production are derived from providing seafood to consumers, maintaining an economically viable fishery together with its attendant contributions to the national, regional, and local economies, and utilizing the capacity of the Nation's fishery resources to meet nutritional needs.

(ii) The benefits of recreational opportunities reflect the quality of both the recreational fishing experience and non-consumptive fishery uses such as ecotourism, fish watching, and recreational diving, and the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(iii) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining evolutionary and ecological processes (e.g., disturbance regimes, hydrological processes, nutrient cycles), maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(3) *Factors relevant to OY.* Because fisheries have finite capacities, any attempt to maximize the measures of benefit described in paragraph (f)(2) of this section will inevitably encounter practical constraints. One of these is MSY. Moreover, various factors can constrain the optimum level of catch to a value less than MSY. The Magnuson-Stevens Act's definition of OY identifies three categories of such factors: Social, economic, and ecological. Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding reductions in MSY.

(i) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Other factors that may be considered include the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(ii) *Economic factors.* Examples are prudent consideration of the risk of overharvesting when a stock's size or productive capacity is uncertain, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Other factors that may be considered include the value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, and the attendant increase in catch per unit of effort, alternate employment opportunities, and economies of coastal areas.

(iii) *Ecological factors.* Examples are stock size and age composition, the vulnerability of incidental or unregulated stocks in a mixed-stock fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Also important are ecological or environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Specification.* (i) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish. However, OY may be expressed as a formula that converts periodic stock assessments into target harvest levels; in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement; or as an amount of fish taken only in certain areas, in certain seasons, with particular gear, or by a specified amount of fishing effort.

(ii) Either a range or a single value may be specified for OY. Specification of a numerical, fixed-value OY does not preclude use of annual target harvest levels that vary with stock size. Such target harvest levels may be prescribed on the basis of an OY control rule similar to the MSY control rule described in paragraph (c)(1)(ii) of this section, but designed to achieve OY on average, rather than MSY. The annual harvest level obtained under an OY control rule must always be less than or equal to the harvest level that would be obtained under the MSY control rule.

(iii) All fishing mortality must be counted against OY, including that resulting from bycatch, scientific research, and any other fishing activities.

(iv) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any TALFF and analyzing impacts of the management regime. There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(v) The determination of OY requires a specification of MSY, which may not always be possible or meaningful. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, the OY must still be based on the best scientific information available. When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY to the extent possible (also see paragraph (c)(3) of this section).

(vi) In a mixed-stock fishery, specification of a fishery-wide OY may be accompanied by management measures establishing separate annual target harvest levels for the individual stocks. In such cases, the sum of the individual target levels should not exceed OY.

(5) *OY and the precautionary approach.* In general, Councils should adopt a precautionary approach to specification of OY. A precautionary approach is characterized by three features:

(i) Target reference points, such as OY, should be set safely below limit reference points, such as the catch level associated with the fishing mortality rate or level defined by the status determination criteria. Because it is a target reference point, OY does not constitute an absolute ceiling, but rather a desired result. An FMP must contain conservation and management measures to achieve OY, and provisions for information collection that are designed to determine the degree to which OY is achieved on a continuing

basis—that is, to result in a long-term average catch equal to the long-term average OY, while meeting the status determination criteria. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach OY, but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive, or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate national standard 1, because OY was not achieved on a continuing basis.

(ii) A stock or stock complex that is below the size that would produce MSY should be harvested at a lower rate or level of fishing mortality than if the stock or stock complex were above the size that would produce MSY.

(iii) Criteria used to set target catch levels should be explicitly risk averse, so that greater uncertainty regarding the status or productive capacity of a stock or stock complex corresponds to greater caution in setting target catch levels. Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(6) *Analysis.* An FMP must contain an assessment of how its OY specification was determined (section 303(a)(3) of the Magnuson-Stevens Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to determine the amount, if any, by which MSY exceeds OY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation. If overfishing is permitted under paragraph (d)(6) of this section, the assessment must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any species or ecologically significant unit thereof reaching a threatened or endangered status, as well as the risk of any stock or stock complex falling below its minimum stock size threshold.

(7) *OY and foreign fishing.* Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States.

(i) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(ii) *DAP.* Each FMP must assess the capacity of U.S. processors. It must also assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(iii) *JVP.* When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

[63 FR 24229, May 1, 1998]

§ 600.315 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development.* The fact that scientific information concerning a

fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 600.320(d)(2) and 600.340(b).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but should justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again, unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation.* (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within state boundaries, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource, marine ecosystem, and the fishery (including fishing communities).

(3) The information submitted by various data suppliers should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment.* FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

(e) *SAFE Report.* (1) The SAFE report is a document or set of documents that provides Councils with a summary of information concerning the most recent biological condition of stocks and the marine ecosystems in the FMU and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks, marine ecosystems, and fisheries being managed under Federal regulation.

(i) The Secretary has the responsibility to assure that a SAFE report or similar document is prepared, reviewed annually, and changed as necessary for each FMP. The Secretary or Councils may utilize any combination of talent from Council, state, Federal, university, or other sources to acquire and analyze data and produce the SAFE report.

(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource, marine ecosystems, and fishery over time, and assessing the relative success of existing state and Federal fishery management programs. Information on bycatch and safety for each fishery should also be summarized. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

(iii) Each SAFE report must be scientifically based, and cite data sources and interpretations.

(2) Each SAFE report should contain information on which to base harvest specifications.

(3) Each SAFE report should contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with information by which the Council may determine:

(i) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold.

(ii) Any management measures necessary to provide for rebuilding an overfished stock or stock complex (if any) to a level consistent with producing the MSY in such fishery.

(4) Each SAFE report may contain additional economic, social, community, essential fish habitat, and ecological information pertinent to the success of management or the achievement of objectives of each FMP.

(5) Each SAFE report may contain additional economic, social, and ecological information pertinent to the success of management or the achievement of objectives of each FMP.

[61 FR 32540, June 24, 1996, as amended at 63 FR 24233, May 1, 1998]

§ 600.320 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (e.g., Councils, states, Federal Government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council(s) will prepare the FMP, under section 304(f) of the Magnuson-Stevens Act.

(d) *Management unit.* The term ''management unit'' means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout the year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement them only within the EEZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exits or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent states and their effects on the FMP's objectives and management measures. Where state action is necessary to implement measures within state waters to achieve FMP objectives, the FMP should identify what state action is necessary, discuss the consequences of state inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on state management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

[61 FR 32540, June 24, 1996, as amended at 63 FR 24234, May 1, 1998]

§ 600.325 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be:

(1) Fair and equitable to all such fishermen.

(2) Reasonably calculated to promote conservation.

(3) Carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different states.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. An FMP may not incorporate or rely on a state statute or regulation that discriminates against residents of another state. Conservation and management measures that have different effects on persons in various geographic locations are permissible if they satisfy the other guidelines under Standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the EEZ to those holding a permit from state X would violate Standard 4 if state X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the state closest to it, because they would have to travel farther to an open area, but the closure could be justified under Standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3)(i) through (c)(3)(iii) of this section.

(1) *Definition.* An ''allocation'' or ''assignment'' of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen,

assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered, but rejected by the Council, should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3)(i) through (c)(3)(iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of longtime participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as ''fair and equitable,'' if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered ''conservation and management'' measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

[61 FR 32540, June 24, 1996, as amended at 63 FR 24234, May 1, 1998]

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, consider efficiency in the

utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources*—(1) *General.* The term ''utilization'' encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In considering efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency*. In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where ''conservation'' constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A ''system for limiting access,'' which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson-Stevens Act, except for fees allowed under section 304(d)(2).

(2) *Factors to consider.* The Magnuson-Stevens Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson-Stevens Act and in § 600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitations on returning economic rent to the public under section 304(d). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain, in terms of the FMP's objectives, any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If, during FMP development, the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP, as well as the economic objectives.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 63 FR 24234, May 1, 1998]

§ 600.335 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase ''conservation and management'' implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely response to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurrences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP. Examples are:

(i) *Reduce OY.* Lack of scientific knowledge about the condition of a stock(s) could be reason to reduce OY.

(ii) *Establish a reserve.* Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) *Adjust management techniques.* In the absence of adequate data to predict the effect of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having

jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description should enable the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances in the fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 600.340 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management*—(1) *General.* The principle that not every fishery needs regulation is implicit in this standard. The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 600.320(d)(2). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal states.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by states, by state/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson-Stevens Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, state, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added

research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives, including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: Capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 63 FR 24234, May 1, 1998]

§ 600.345 National Standard 8—Communities.

(a) *Standard 8.* Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

(1) Provide for the sustained participation of such communities; and

(2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) *General.* (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.

(3) The term ''fishing community'' means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and

share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

(4) The term ''sustained participation'' means continued access to the fishery within the constraints of the condition of the resource.

(c) *Analysis.* (1) FMPs must examine the social and economic importance of fisheries to communities potentially affected by management measures. For example, severe reductions of harvests for conservation purposes may decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may benefit some communities at the expense of others.

(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act. Qualitative and quantitative data may be used, including information provided by fishermen, dealers, processors, and fisheries organizations and associations. In cases where data are severely limited, effort should be directed to identifying and gathering needed data.

(3) To address the sustained participation of fishing communities that will be affected by management measures, the analysis should first identify affected fishing communities and then assess their differing levels of dependence on and engagement in the fishery being regulated. The analysis should also specify how that assessment was made. The best available data on the history, extent, and type of participation of these fishing communities in the fishery should be incorporated into the social and economic information presented in the FMP. The analysis does not have to contain an exhaustive listing of all communities that might fit the definition; a judgment can be made as to which are primarily affected. The analysis should discuss each alternative's likely effect on the sustained participation of these fishing communities in the fishery.

(4) The analysis should assess the likely positive and negative social and economic impacts of the alternative management measures, over both the short and the long term, on fishing communities. Any particular management measure may economically benefit some communities while adversely affecting others. Economic impacts should be considered both for individual communities and for the group of all affected communities identified in the FMP. Impacts of both consumptive and non-consumptive uses of fishery resources should be considered.

(5) A discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law.

[63 FR 24234, May 1, 1998]

§ 600.350 National Standard 9—Bycatch.

(a) *Standard 9.* Conservation and management measures shall, to the extent practicable:

(1) Minimize bycatch; and

(2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(b) *General.* This national standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Bycatch can, in two ways, impede efforts to protect marine ecosystems and achieve sustainable fisheries and the full benefits they can provide to the Nation. First, bycatch can increase substantially the uncertainty concerning total fishing-related mortality, which makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Second, bycatch may also preclude other more productive uses of fishery resources.

(c) *Definition—Bycatch.* The term ''bycatch'' means fish that are harvested in a fishery, but that are not sold or kept for personal use. Bycatch

includes the discard of whole fish at sea or elsewhere, including economic discards and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality). Bycatch does not include any fish that legally are retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade. Bycatch does not include fish released alive under a recreational catch-and-release fishery management program. A catch-and-release fishery management program is one in which the retention of a particular species is prohibited. In such a program, those fish released alive would not be considered bycatch. Bycatch also does not include Atlantic highly migratory species harvested in a commercial fishery that are not regulatory discards and that are tagged and released alive under a scientific tag-and-release program established by the Secretary.

(d) *Minimizing bycatch and bycatch mortality*. The priority under this standard is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive. Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses. In their evaluation, the Councils must consider the net benefits to the Nation, which include, but are not limited to: Negative impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-market values of bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as recreational values; and impacts on other marine organisms. To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils must—

(1) *Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable*. A review and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of this standard and of section 303(a)(11) and (12) of the Magnuson-Stevens Act. Bycatch should be categorized to focus on management responses necessary to minimize bycatch and bycatch mortality to the extent practicable. When appropriate, management measures, such as at-sea monitoring programs, should be developed to meet these information needs.

(2) *For each management measure, assess the effects on the amount and type of bycatch and bycatch mortality in the fishery*. Most conservation and management measures can affect the amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable. In analyzing measures, including the status quo, Councils should assess the impacts of minimizing bycatch and bycatch mortality, as well as consistency of the selected measure with other national standards and applicable laws. The benefits of minimizing bycatch to the extent practicable should be identified and an assessment of the impact of the selected measure on bycatch and bycatch mortality provided. Due to limitations on the information available, fishery managers may not be able to generate precise estimates of bycatch and bycatch mortality or other effects for each alternative. In the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative measures. Information on the amount and type of bycatch should be summarized in the SAFE reports.

(3) *Select measures that, to the extent practicable, will minimize bycatch and bycatch mortality*. (i) A determination of whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards and maximization of net benefits to the Nation, should consider the following factors:

(A) Population effects for the bycatch species.

(B) Ecological effects due to changes in the bycatch of that species (effects on other species in the ecosystem).

(C) Changes in the bycatch of other species of fish and the resulting population and ecosystem effects.

(D) Effects on marine mammals and birds.

(E) Changes in fishing, processing, disposal, and marketing costs.

(F) Changes in fishing practices and behavior of fishermen.

(G) Changes in research, administration, and enforcement costs and management effectiveness.

(H) Changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources.

(I) Changes in the distribution of benefits and costs.

(J) Social effects.

(ii) The Councils should adhere to the precautionary approach found in the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5), which is available from the Director, Publications Division, FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy, when faced with uncertainty concerning any of the factors listed in this paragraph (d)(3).

(4) *Monitor selected management measures.* Effects of implemented measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected management measures. Where applicable, plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordination of data management for cost efficiency, and avoidance of duplicative effort.

(e) *Other considerations.* Other applicable laws, such as the MMPA, the ESA, and the Migratory Bird Treaty Act, require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e., marine mammals and birds.

[63 FR 24235, May 1, 1998]

§ 600.355 National Standard 10—Safety of Life at Sea.

(a) *Standard 10.* Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) *General.* (1) Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. The standard directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management. This standard is not meant to give preference to one method of managing a fishery over another.

(2) The qualifying phrase ''to the extent practicable'' recognizes that regulation necessarily puts constraints on fishing that would not otherwise exist. These constraints may create pressures on fishermen to fish under conditions that they would otherwise avoid. This standard instructs the Councils to identify and avoid those situations, if they can do so consistent with the legal and practical requirements of conservation and management of the resource.

(3) For the purposes of this national standard, the safety of the fishing vessel and the protection from injury of persons aboard the vessel are considered the same as ''safety of human life at sea. The safety of a vessel and the people aboard is ultimately the responsibility of the master of that vessel. Each master makes many decisions about vessel maintenance and loading and about the capabilities of the vessel and crew to operate safely in a variety of weather and sea conditions. This national standard does not replace the judgment or relieve the responsibility of the vessel master related to vessel safety. The Councils, the USCG, and NMFS, through the consultation process of paragraph (d) of this section, will review all FMPs, amendments, and regulations during their development to ensure they recognize any impact on the safety of human life at sea and minimize or mitigate that impact where practicable.

(c) *Safety considerations.* The following is a non-inclusive list of safety

considerations that should be considered in evaluating management measures under national standard 10.

(1) *Operating environment.* Where and when a fishing vessel operates is partly a function of the general climate and weather patterns of an area. Typically, larger vessels can fish farther offshore and in more adverse weather conditions than smaller vessels. An FMP should try to avoid creating situations that result in vessels going out farther, fishing longer, or fishing in weather worse than they generally would have in the absence of management measures. Where these conditions are unavoidable, management measures should mitigate these effects, consistent with the overall management goals of the fishery.

(2) *Gear and vessel loading requirements.* A fishing vessel operates in a very dynamic environment that can be an extremely dangerous place to work. Moving heavy gear in a seaway creates a dangerous situation on a vessel. Carrying extra gear can also significantly reduce the stability of a fishing vessel, making it prone to capsizing. An FMP should consider the safety and stability of fishing vessels when requiring specific gear or requiring the removal of gear from the water. Management measures should reflect a sensitivity to these issues and provide methods of mitigation of these situations wherever possible.

(3) *Limited season and area fisheries.* Fisheries where time constraints for harvesting are a significant factor and with no flexibility for weather, often called ''derby'' fisheries, can create serious safety problems. To participate fully in such a fishery, fishermen may fish in bad weather and overload their vessel with catch and/or gear. Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes, as discussed in paragraph (e) of this section.

(d) *Consultation.* During preparation of any FMP, FMP amendment, or regulation that might affect safety of human life at sea, the Council should consult with the USCG and the fishing industry as to the nature and extent of any adverse impacts. This consultation may be done through a Council advisory panel, committee, or other review of the FMP, FMP amendment, or regulations. Mitigation, to the extent practicable, and other safety considerations identified in paragraph (c) of this section should be included in the FMP.

(e) *Mitigation measures.* There are many ways in which an FMP may avoid or provide alternative measures to reduce potential impacts on safety of human life at sea. The following is a list of some factors that could be considered when management measures are developed:

(1) Setting seasons to avoid hazardous weather.

(2) Providing for seasonal or trip flexibility to account for bad weather (weather days).

(3) Allowing for pre- and post-season ''soak time'' to deploy and pick up fixed gear, so as to avoid overloading vessels with fixed gear.

(4) Tailoring gear requirements to provide for smaller or lighter gear for smaller vessels.

(5) Avoiding management measures that require hazardous at-sea inspections or enforcement if other comparable enforcement could be accomplished as effectively.

(6) Limiting the number of participants in the fishery.

(7) Spreading effort over time and area to avoid potential gear and/or vessel conflicts.

(8) Implementing management measures that reduce the race for fish and the resulting incentives for fishermen to take additional risks with respect to vessel safety.

[63 FR 24236, May 1, 1998]

Subpart E—Confidentiality of Statistics

§ 600.405 Types of statistics covered.

NOAA is authorized under the Magnuson-Stevens Act and other statutes to collect proprietary or confidential commercial or financial information. This part applies to all pertinent data required to be submitted to the Secretary with respect to any FMP including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in

which fishing occurred, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, U.S. fish processors.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.410 Collection and maintenance of statistics.

(a) *General.* (1) All statistics required to be submitted to the Secretary are provided to the Assistant Administrator.

(2) After receipt, the Assistant Administrator will remove all identifying particulars from the statistics if doing so is consistent with the needs of NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) *Collection agreements with states.* (1) The Assistant Administrator may enter into an agreement with a state authorizing the state to collect statistics on behalf of the Secretary.

(2) NMFS will not enter into a cooperative collection agreement with a state unless the state has authority to protect the statistics from disclosure in a manner at least as protective as these regulations.

§ 600.415 Access to statistics.

(a) *General.* In determining whether to grant a request for access to confidential data, the following information will be taken into consideration (also see § 600.130):

(1) The specific types of data required.

(2) The relevance of the data to conservation and management issues.

(3) The duration of time access will be required: continuous, infrequent, or one-time.

(4) An explanation of why the availability of aggregate or non-confidential summaries of data from other sources would not satisfy the requested needs.

(b) *Federal employees.* Statistics submitted as a requirement of an FMP and that reveal the identity of the submitter will only be accessible to the following:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics.

(2) Federal employees who are responsible for FMP development, monitoring, and enforcement.

(3) Personnel within NMFS performing research that requires confidential statistics.

(4) Other NOAA personnel on a demonstrable need-to-know basis.

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(c) *State personnel.* Upon written request, confidential statistics will only be accessible if:

(1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management.

(2) The state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson-Stevens Act and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

(d) *Councils.* Upon written request by the Council Executive Director, access to confidential data will be granted to:

(1) Council employees who are responsible for FMP development and monitoring.

(2) A Council for use by the Council for conservation and management purposes, with the approval of the Assistant Administrator. In addition to the information described in paragraph (a) of this section, the Assistant Administrator will consider the following in deciding whether to grant access:

(i) The possibility that Council members might gain personal or competitive advantage from access to the data.

(ii) The possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

(3) A contractor of the Council for use in such analysis or studies necessary for conservation and management purposes, with approval of the Assistant Administrator and execution of an agreement with NMFS as described by NOAA Administrative Order (NAO) 216–100.

(e) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216–100.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.420 Control system.

(a) The Assistant Administrator maintains a control system to protect the identity of submitters of statistics required by an FMP. The control system:

(1) Identifies those persons who have access to the statistics.

(2) Contains procedures to limit access to confidential data to authorized users.

(3) Provides for safeguarding the data.

(b) This system requires that all persons who have authorized access to the data be informed of the confidentiality of the data. These persons are required to sign a statement that they:

(1) Have been informed that the data are confidential.

(2) Have reviewed and are familiar with the procedures to protect confidential statistics.

§ 600.425 Release of statistics.

(a) The Assistant Administrator will not release to the public any statistics required to be submitted under an FMP in a form that would identify the submitter, except as required by law.

(b) All requests from the public for statistics submitted in response to a requirement of an FMP will be processed consistent with the NOAA FOIA regulations (15 CFR part 903), NAO 205–14, Department of Commerce Administrative Orders 205–12 and 205–14 and 15 CFR part 4.

(c) NOAA does not release or allow access to confidential information in its possession to members of Council advisory groups, except as provided by law.

Subpart F—Foreign Fishing

§ 600.501 Vessel permits.

(a) *General.* (1) Each FFV fishing under the Magnuson-Stevens Act must have on board a permit issued under this section, unless it is engaged only in recreational fishing.

(2) Permits issued under this section do not authorize FFV's or persons to harass, capture, or kill marine mammals. No marine mammals may be taken in the course of fishing unless that vessel has on board a currently valid Authorization Certificate under the MMPA. Regulations governing the taking of marine mammals incidental to commercial fishing operations are contained in 50 CFR part 229 of this title.

(b) *Responsibility of owners and operators.* The owners and operators of each FFV are jointly and severally responsible for compliance with the Magnuson-Stevens Act, the applicable GIFA, this subpart, and any permit issued under the Magnuson-Stevens Act and this subpart. The owners and operators of each FFV bear civil responsibility for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Activity codes.* Permits to fish under this subpart may be issued by the Assistant Administrator for the activities described in this paragraph, but the permits may be modified by regulations of this subpart and by the conditions and restrictions attached to the permit (see paragraphs (e)(1)(v) and (l) of this section). The Assistant Administrator may issue a permit, as appropriate, for one or more of the activity codes listed. Only vessels of nations having a GIFA with the United States may be issued permits for activity

codes 1 through 9. A GIFA is not required for a vessel to be issued a permit for activity code 10. The activity codes are described as follows:

(1) *Activity Code 1.* Catching, scouting, processing, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

(2) *Activity Code 2.* Processing, scouting, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

(3) *Activity Code 3.* Transshipping, scouting, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

(4) *Activity Code 4.* Processing, scouting, transshipping, and supporting U.S. vessels delivering fish to foreign vessels. Activity is limited to the receipt of unprocessed fish harvested or to be harvested by U.S. vessels.

(5) *Activity Code 5.* Transshipping, scouting, and supporting foreign vessels. Transshipment limited to fish received or to be received from foreign vessels processing fish from U.S. harvesting vessels.

(6) *Activity Code 6.* Transshipping, scouting, and supporting U.S. vessels. Transshipment limited to U.S.-harvested fish processed on board U.S. vessels.

(7) *Activity Code 7.* Processing, transshipping, and supporting foreign vessels. Activity limited to fish harvested or to be harvested by foreign vessels seaward of the EEZ.

(8) *Activity Code 8.* Transshipping and supporting foreign vessels. Activity is limited to fish harvested or to be harvested seaward of the EEZ by foreign vessels or fish duly authorized for processing in the internal waters of one of the states.

(9) *Activity Code 9.* Supporting U.S. fishing vessels and U.S. fish processing vessels and any foreign fishing vessels authorized under any activity code under paragraph (c) of this subpart.

(10) *Activity Code 10.* Transshipping at sea for the purpose of transporting fish or fish products from a point within the EEZ or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States.

(d) *Application.* (1) Applications for FFV permits authorizing activity codes 1 through 9 must be submitted by an official representative of a foreign nation to the DOS. Applications for permits authorizing activity codes 1 through 9 are available from, and should be submitted to, DOS, OES/OMC, Washington, DC 20520. Applications for FFV permits authorizing activity code 10 may be submitted by any person to the Assistant Administrator. Applications for permits authorizing activity code 10 are available from NMFS, Attn: International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910. All applicants should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Councils and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 600.518.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Applicants for FFV's that will support U.S. vessels in joint ventures (Activity Code 4) must provide the additional information specified by the permit application form.

(4) Each applicant may request to substitute one FFV for another of the same flag by submitting a new application form and a short explanation of the reason for the substitution to the appropriate address listed at paragraph (d)(1) of this section. Each substitution is considered a new application, and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the appropriate Council(s) and governmental agencies have been notified of the substituted application.

(e) *Issuance.* (1) Permits may be issued to an FFV by the Assistant Administrator after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson-Stevens Act and approves the permit application.

(ii) The applicant has paid the fees and provided any assurances required by the Secretary in accordance with the provisions of § 600.518.

(iii) The applicant has appointed an agent.

(iv) The applicant has identified a designated representative.

(v) The applicant has accepted the general ''conditions and restrictions'' of receiving permits, as required by section 204(b)(7) of the Magnuson-Stevens Act, and any ''additional restrictions'' attached to the permit for the conservation and management of fishery resources or for the prevention of significant impairment of the national defense or security interests.

(2) The DOS will provide permits for activity codes 1 through 9 to the official representative of the applicant foreign nation. The Assistant Administrator will provide permits for activity code 10 directly to the applicant.

(3) An approved permit will contain—

(i) The name and IRCS of the FFV and its permit number.

(ii) The permitted fisheries and/or activity codes.

(iii) The date of issuance and expiration date, if other than December 31.

(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats that are launched from larger vessels. Any enforcement action that results from the activities of a launched boat will be taken against the permitted vessel.

(f) *Duration.* A permit is valid from its date of issuance to its date of expiration, unless it is revoked or suspended or the nation issuing the FFV's documents does not accept amendments to the permit made by the Assistant Administrator in accordance with the procedures of paragraph (l) of this section. The permit will be valid for no longer than the calendar year in which it was issued.

(g) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the FFV to which it is issued.

(h) *Display.* Each FFV operator must have a properly completed permit form available on board the FFV when engaged in fishing activities and must produce it at the request of an authorized officer or observer.

(i) *Suspension and revocation.* NMFS may apply sanctions to an FFV's permit by revoking, suspending, or imposing additional permit restrictions on the permit under 15 CFR part 904, if the vessel is involved in the commission of any violation of the Magnuson-Stevens Act, the GIFA, or this subpart; if an agent and a designated representative are not maintained in the United States; if a civil penalty or criminal fine imposed under the Magnuson-Stevens Act has become overdue; or as otherwise specified in the Magnuson-Stevens Act.

(j) *Fees.* Permit application fees are described in § 600.518.

(k) *Change in application information.* The applicant must report, in writing, any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

(l) *Permit amendments.* (1) The Assistant Administrator may amend a permit by adding ''additional restrictions'' for the conservation and management of fishery resources covered by the permit, or for the national defense or security if the Assistant Administrator determines that such interests would be significantly impaired without such restrictions. Compliance with the added additional restrictions is a condition of the permit. Violations of added additional restrictions will be treated as violations of this subpart.

(2) The Assistant Administrator may make proposed additional restrictions effective immediately, if necessary, to prevent substantial harm to a fishery resource of the United States, to allow for the continuation of ongoing fishing operations, or to allow for fishing to begin at the normal time for opening of the fishery.

(3) The Assistant Administrator will send proposed additional restrictions to each Nation whose vessels are affected (via the Secretary of State), to the appropriate Councils, and to the

Commandant of the Coast Guard. NMFS will, at the same time, publish a document of any significant proposed additional restrictions in the FEDERAL REGISTER. The document will include a summary of the reasons underlying the proposal, and the reasons that any proposed additional restrictions are made effective immediately.

(4) The Nation whose vessels are involved, the owners of the affected vessels, their representatives, the agencies specified in paragraph (l)(3) of this section, and the public may submit written comments on the proposed additional restrictions within 30 days after publication in the FEDERAL REGISTER.

(5) The Assistant Administrator will make a final decision regarding the proposed additional restrictions as soon as practicable after the end of the comment period. The Assistant Administrator will provide the final additional restrictions to the Nation whose vessels are affected (via the Secretary of State) according to the procedures of paragraph (e) of this section. The Assistant Administrator will include with the final additional restrictions to the Nation, a response to comments submitted.

(6) Additional restrictions may be modified by following the procedures of paragraphs (l)(2) through (l)(5) of this section.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 64 FR 39019, July 21, 1999]

§ 600.502 Vessel reports.

(a) The operator of each FFV must report the FFV's activities to the USCG and NMFS as specified in this section.

(b) All reports required by this section must be in English and in the formats specified in the permit additions and restrictions. Reports must be delivered via private or commercial communications facilities, facsimile, or other electronic means acceptable to NMFS and the USCG, directly to the appropriate NMFS Region or Center and USCG commander. Weekly reports must also be delivered directly to the appropriate NMFS Region or Center (see tables 1 and 2 of this section). (The required reports may be delivered to the closest USCG communication station as indicated in table 3 of this section or other USCG communication station only if adequate private or commercial communications facilities have not been successfully contacted.) Radio reports must be made via radiotelegraphy, Telex, or facsimile where available. For the purposes of this section, a message is considered ''transmitted'' when its receipt is acknowledged by a communications facility and considered ''delivered'' upon its receipt by the offices of the appropriate USCG commander, NMFS Regional Office, or NMFS Center identified in table 2 of this section. Reports required by this section may be submitted by the vessel's designated representative; however, the operator of the FFV is responsible for the correct and timely filing of all required reports.

(c) *Activity reports.* The operator of each FFV must report the FFV's movements and activities before or upon the event, as specified in this paragraph (c). Appropriate forms, instructions, codes, and examples are contained in the conditions and restrictions of the FFV's permit. Each FFV report must contain the following information: The message identifier ''VESREP'' to indicate it is a vessel activity report, FFV name, international radio call sign IRCS, date (month and day based on GMT), time (hour and minute GMT), position (latitude and longitude to the nearest degree and minute) where required, area (by fishing area code) where required, the appropriate action code, confirmation codes where required, and the other information specified in paragraphs (c)(1) through (c)(11) of this section.

(1) *''BEGIN''.* Each operator must specify the date, time, position, and area the FFV will actually ''BEGIN'' fishing in the EEZ and the species (by species code), product (by product code), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board when entering the EEZ (action code ''BEGIN''). The message must be delivered at least 24 hours before the vessel begins to fish.

(2) *''DEPART''.* Each operator must specify the date, time, position, and area the FFV will ''DEPART'' the EEZ to embark or debark an observer, to

visit a U.S. port, to conduct a joint venture in internal waters, or to otherwise temporarily leave an authorized fishing area, but not depart the seaward limit of the EEZ (action code ''DEPART''). The message must be transmitted before the FFV departs the present fishing area and delivered within 24 hours of its transmittal.

(3) *''RETURN''*. Each operator must specify the date, time, position, and area the FFV will ''RETURN'' to the EEZ following a temporary departure, and the species (by species code), product (by product code), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board that were received in a joint venture in internal waters (action code ''RETURN''). The message must be transmitted before returning to the EEZ and delivered within 24 hours of its transmittal.

(4) *''SHIFT''*. Each operator must report each SHIFT in fishing area (as described for each fishery) by specifying the date, time, and position the FFV will start fishing, and the new area (action code ''SHIFT''). The message must be transmitted before leaving the original area and delivered within 24 hours of its transmittal. If a foreign vessel operates within 20 nautical miles (37.04 km) of a fishing area boundary, its operator may submit in one message the shift reports for all fishing area shifts occurring during 1 fishing day (0001–2400 GMT). This message must be transmitted prior to the last shift expected to be made in the day and delivered within 24 hours of its transmittal.

(5) *''JV OPS''*. Each operator must specify the date, time, position, and area at which the FFV will ''START'' joint venture operations (action code ''START JV OPS'') or ''END'' joint venture operations (action code ''END JV OPS''). These reports must be made in addition to other activity reports made under this section. Each message must be transmitted before the event and delivered within 24 hours of its transmittal.

(6) *''TRANSFER''*. The operator of each FFV that anticipates a transshipping operation in which the FFV will receive fish or fisheries products must specify the date, time, position and area the FFV will conduct the ''TRANSFER'' and the name and IRCS of the other FFV or U.S. vessel involved (action code ''TRANSFER''). The report must include the permit activity code under which the transfer will be made. The message must be transmitted prior to the transfer and delivered within 24 hours of its transmittal. The movement of raw fish from a permitted foreign catching vessel or, under an Activity Code 4, from a U.S. fishing vessel to the reporting processing vessel and the return of nets or codends is not considered a transfer.

(7) *''OFFLOADED''*. Each operator must specify the date, time, position, and area the FFV ''OFFLOADED'' fish or fisheries products TO another FFV or a U.S. vessel in a transfer, the other FFV's or U.S. vessel's name, IRCS, Permit Activity Code under which the transfer was made, species (by species code) and quantity of fish and fisheries products (by product code and by product weight, to the nearest hundredth of a metric ton) offloaded (action code ''OFFLOADED TO''). The message must be transmitted within 12 hours after the transfer is completed and delivered within 24 hours of its transmittal and before the FFV ceases fishing in the EEZ.

(8) *''RECEIVED''*. Each operator must specify the date, time, position and area the vessel ''RECEIVED'' fish or fisheries products FROM another FFV in a transfer, the other FFV's or U.S. vessel's name, IRCS, Permit Activity Code under which the receipt was made, species (by species code) and quantity of fish and fisheries products (by product code and by product weight, to the nearest hundredth of a metric ton) received (action code ''RECEIVED FROM''). The message must be transmitted within 12 hours after the transfer is completed and delivered within 24 hours of its transmittal and before the vessel ceases fishing in the EEZ.

(9) *''CEASE''*. Each operator must specify the date, time, position, and area the FFV will ''CEASE'' fishing in order to leave the EEZ (action code ''CEASE''). The message must be delivered at least 24 hours before the FFV's departure.

(10) *''CHANGE''*. Each operator must report any ''CHANGE'' TO the FFV's

operations if the position or time of an event specified in an activity report will vary more than 5 nautical miles (9.26 km) or 4 hours from that previously reported, by sending a revised message inserting the word ''CHANGE'' in front of the previous report, repeating the name, IRCS, date, and time of the previous report, adding the word ''TO'' and the complete revised text of the new report (action code ''CHANGE TO''). Changes to reports specifying an early beginning of fishing by an FFV or other changes to reports contained in paragraphs (c)(1) through (c)(9) of this section must be transmitted and delivered as if the ''CHANGE'' report were the original message.

(11) *''CANCEL''.* Each operator wanting to ''CANCEL'' a previous report may do so by sending a revised message, and inserting the word ''CANCEL'' in front of the previous report's vessel name, IRCS, date, time and action code canceled (action code ''CANCEL''). The message must be transmitted and delivered prior to the date and time of the event in the original message.

(d) The operator of an FFV will be in violation of paragraphs (c)(1) through (c)(9) of this section if the FFV does not pass within 5 nautical miles (9.26 km) of the position given in the report within 4 hours of the time given in the report.

(e) The notices required by this section may be provided for individual or groups of FFV's (on a vessel-by-vessel basis) by authorized persons. An FFV operator may retransmit reports on the behalf of another FFV, if authorized by that FFV's operator. This does not relieve the individual vessel operator of the responsibility of filing required reports. In these cases, the message format should be modified so that each line of text under ''VESREP'' is a separate vessel report.

(f) *Weekly reports.* (1) The operator of each FFV in the EEZ must submit appropriate weekly reports through the Nation's designated representative. The report must arrive at the address and time specified in paragraph (g) of this section. The reports may be sent by facsimile or Telex, but a completed copy of the report form must be mailed or hand delivered to confirm the Telex. Appropriate forms, instructions, codes, and examples are contained in the conditions and restrictions of the FFV's permit. Designated representatives may include more than one vessel report in a facsimile or Telex message, if the information is submitted on a vessel-by-vessel basis. Requests for corrections to previous reports must be submitted through the Nation's designated representative and mailed or hand-delivered, together with a written explanation of the reasons for the errors. The appropriate Regional Administrator or Science and Research Director may accept or reject any correction and initiate any appropriate civil penalty actions.

(2) *Weekly catch report (CATREP).* The operator of each FFV must submit a weekly catch report stating any catch (Activity Code 1) in round weight of each species or species group allocated to that Nation by area and days fished in each area for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged. Foreign vessels delivering unsorted, unprocessed fish to a processing vessel are not required to submit CATREP's, if that processing vessel (Activity Code 2) submits consolidated CATREP's for all fish received during each weekly period. No report is required for FFV's that do not catch or receive foreign-caught fish during the reporting period.

(3) *Weekly receipts report (RECREP).* The operator of each FFV must submit a weekly report stating any receipts of U.S.-harvested fish in a joint venture (Activity Code 4) for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged, for each fishing area, by authorized or prohibited species or species group; days fish received; round weight retained or returned to the U.S. fishing vessel; number of codends received; and number of vessels transferring codends. The report must also include the names of U.S. fishing vessels transferring codends during the week. No report is required for FFV's that do not receive any U.S.-harvested fish during the reporting period.

(4) *Marine mammal report (MAMREP).* The operator of each FFV must submit a weekly report stating any incidental

catch or receipt of marine mammals (Activity Codes 1 or 2 and/or 4), the geographical position caught, the condition of the animal, number caught (if more than one of the same species and condition), and nationality of the catching vessel for the period Sunday through Saturday, GMT, as modified by the fishery in which the vessel is engaged. Foreign catching vessels delivering unsorted, unprocessed fish to processing vessel are not required to submit MAMREP's, provided that the processing or factory vessel (Activity Code 2) submits consolidated MAMREP's for all fish received during each weekly period. FFV's receiving U.S.-harvested fish in a joint venture (Activity Code 4) must submit consolidated reports for U.S. vessels operating in the joint venture. No report is required for FFV's that do not catch or receive marine mammals during the reporting period.

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional Administrator or Science and Research Director of NMFS by 1900 GMT on the Wednesday following the end of the reporting period. However, by agreement with the appropriate Regional Administrator or Science and Research Director, the designated representative may submit weekly reports to some other facility of NMFS.

(h) *Alternative reporting procedures.* As an alternative to the use of the specific procedures provided, an applicant may submit proposed reporting procedures for a general type of fishery operation (i.e., transshipments under Activity Code 10) to the appropriate Regional Administrator and the USCG commander (see tables 1 and 2 to § 600.502 of this chapter). With the agreement of the USCG commander, the Regional Administrator may authorize the use of alternative reporting procedures.

TABLE 1 TO § 600.502—ADDRESSES

NMFS regional administrators	NMFS science and research directors	U.S. Coast Guard commanders
Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298.	Director, Notheast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water St., Woods Hole, MA 02543–1097.	Commander, Atlantic Area, U.S. Coast Guard, 431 Crawford St., Portsmouth, VA 23704.
Administrator, Southeast Region, National Marine Fisheries Service, 9721 Exec. Center Drive N., St. Petersburg, FL 33702.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149–1003.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York 10004.
Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Blvd. East, Seattle, WA 98112–2097.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501.
Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115–0070.	Commander, Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802.
Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038–0271.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.

TABLE 2 TO § 600.502—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility/fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean North of Cape Hatteras	Director, Northeast Science Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Ocean South of Cape Hatteras	Director, Northeast Science Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Tunas, Swordfish, Billfish and Sharks.	Director, Office of Sustainable Fisheries	Commander, Atlantic Area.
Gulf of Mexico and Caribbean Sea	Administrator, Southeast Region	Commander, Atlantic Area.
Pacific Ocean off the States of California, Oregon, and Washington.	Administrator, Northwest Region	Commander, Pacific Area.

TABLE 2 TO § 600.502—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES—Continued

Area of responsibility/fishery	National Marine Fisheries Service	U.S. Coast Guard
North Pacific Ocean and Bering Sea off Alaska.	Administrator, Alaska Region	Commander, Seventeenth Coast Guard District.
Pacific Ocean off Hawaii and Other U.S. Insular Possessions in the Central and Western Pacific.	Administrator, Southwest Region	Commander, Fourteenth Coast Guard District.

TABLE 3 TO § 600.502—U.S. COAST GUARD COMMUNICATIONS STATIONS AND FREQUENCIES

U.S. Coast Guard communications station	Radiotelephone		
	IRCS	Channel [1]	GMT time
Boston	NMF	A–E	2330–1100.
		B,C	All.
		D	1100–2330.
		E	(On request).
CAMSLANT Chesapeake (Portsmouth, VA)	NMN	A	2330–1100.
		B,C	All.
		D	1100–2330.
		E	(On request).
New Orleans	NMG	A	2330–1100.
		B,C	All.
		D	1100–2330.
		E	(On request).
CAMSPAC Point Reyes (San Francisco, CA)	NMC	A–D	All.
		E	(On request).
Honolulu	NMO	A–D	All.
		E	(On request).
Kodiak	NOJ	A–D	All.
		E	(On request).

[1] Carrier frequencies of duplex, high-frequency single-sideband channels are:

Letter	Shore transmit	Ship transmit
A	4426.0	4134.0
B	6501.0	6200.0
C	8764.0	8240.0
D	13089.0	12242.0
E	17314.0	16432.0

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998; 64 FR 39020, July 21, 1999]

§ 600.503 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each FFV assigned an IRCS must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so it is visible from the air.

(2) The operator of each FFV not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix. (For example, JCZM–1, JCZM–2, etc., would be displayed on small trawlers not assigned an IRCS operating with a mothership whose IRCS is JCZM; JANP–1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP.)

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the FFV in block Roman alphabet letters and Arabic numerals at least 1 m in height for FFV's over 20 m in length, and at least 0.5 m in height for all other FFV's.

(b) *Navigational lights and shapes.* Each FFV must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the FFV is engaged (as described at 33 CFR part 81).

(c) *Gear identification.* (1) The operator of each FFV must ensure that all deployed fishing gear that is not physically and continuously attached to an FFV:

(i) Is clearly marked at the surface with a buoy displaying the vessel identification of the FFV (see paragraph (a) of this section) to which the gear belongs.

(ii) Has attached a light visible for 2 nautical miles (3.70 km) at night in good visibility.

(iii) Has a radio buoy.

Trawl codends passed from one vessel to another are considered continuously attached gear and are not required to be marked.

(2) The operator of each FFV must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with: (see paragraphs (c)(1)(i) through (c)(1)(iii) of this section).

(3) Additional requirements may be specified for the fishery in which the vessel is engaged.

(4) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each FFV must—

(1) Keep the vessel and gear identification clearly legible and in good repair.

(2) Ensure that nothing on the FFV obstructs the view of the markings from an enforcement vessel or aircraft.

(3) Ensure that the proper navigational lights and shapes are displayed for the FFV's activity and are properly functioning.

§ 600.504 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any FFV subject to this subpart must immediately comply with instructions and signals issued by an authorized officer to stop the FFV; to move the FFV to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and fish and fish products on board for purposes of enforcing the Magnuson-Stevens Act and this subpart.

(2) The operator of each FFV must provide vessel position or other information when requested by an authorized officer within the time specified in the request.

(b) *Communications equipment.* (1) Each FFV must be equipped with a VHF–FM radiotelephone station located so that it may be operated from the wheelhouse. Each operator must maintain a continuous listening watch on channel 16 (156.8 mHz).

(2) Each FFV must be equipped with a radiotelephone station capable of communicating via 2182 kHz (SSB) radiotelephony and at least one set of working frequencies identified in table 3 to § 600.502 appropriate to the fishery in which the FFV is operating. Each operator must monitor and be ready to communicate via 2182 kHz (SSB) radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) FFV's that are not equipped with processing facilities and that deliver all catches to a foreign processing vessel are exempt from the requirements of paragraph (b)(2) of this section.

(4) FFV's with no IRCS that do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the requirements of paragraphs (b)(1) and (b)(2) of this section.

(5) The appropriate Regional Administrator, with the agreement of the appropriate USCG commander, may, upon request by a foreign nation, accept alternatives to the radio requirements of this section to certain FFV's or types of FFV's operating in a fishery, provided they are adequate for the communications needs of the fishery.

(c) *Communications procedures.* (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of any FFV subject to this subpart must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF–FM radiotelephone, 2182 kHz (SSB) radiotelephone, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or

other appropriate means. The following signals, extracted from the International Code of Signals, are among those that may be used.

(i) ''AA, AA, AA, etc.'', which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 600.505.

(ii) ''RY–CY'', meaning ''You should proceed at slow speed, a boat is coming to you''.

(iii) ''SQ3'', meaning ''You should stop or heave to; I am going to board you''.

(iv) ''L'', meaning ''You should stop your vessel instantly.''

(2) Failure of an FFV's operator to stop the vessel when directed to do so by an authorized officer using VHF–FM radiotelephone (channel 16), 2182 kHz (SSB) radiotelephone (where required), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this subpart.

(3) The operator of or any person aboard an FFV who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the FFV instantly.

(d) *Boarding.* The operator of an FFV signaled for boarding must—

(1) Monitor 2182 kHz (SSB) radiotelephone and channel 16 (156.8 mHz) VHF–FM radiotelephone.

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the FFV and facilitate boarding by the authorized officer and the boarding party or an observer.

(3) Provide the authorized officer, boarding party, or observer a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the FFV and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent national standard approved by letter from the Assistant Administrator, with agreement with the USCG. Safe pilot ladder standards are summarized below:

(i) The ladder must be of a single length of not more than 9 m (30 ft), capable of reaching the water from the point of access to the FFV, accounting for all conditions of loading and trim of the FFV and for an adverse list of 15°. Whenever the distance from sea level to the point of access to the ship is more than 9 m (30 ft), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be—

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics.

(B) Not less than 480 mm (19 inches) long, 115 mm (4.5 inches) wide, and 25 mm (1 inch) in depth, excluding any non-slip device.

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 mm (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps that are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 mm (2.25 inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous, with no joints below the top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 m (5 ft 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed nine steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the FFV not less than 0.70 m (2 ft 3 inches) nor more than 0.80 m (2 ft 7 inches) apart, not less than 40 mm (2.5 inches) in diameter, and must extend not less

than 1.20 m (3 ft 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each FFV must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to, personal quarters and areas within personal quarters.

(2) The owner and operator of each FFV must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to, production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by fish products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.505 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of the Magnuson-Stevens Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(2) Refuse to allow an authorized officer to board an FFV for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson-Stevens Act, the applicable GIFA, this subpart, or any other permit issued under this subpart;

(3) Assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by the Magnuson-Stevens Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(5) Interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by the Magnuson-Stevens Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(6) Interfere with, obstruct, delay, oppose, impede, intimidate, or prevent by any means any boarding, investigation or search, wherever conducted, in the process of enforcing the Magnuson-Stevens Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(7) Engage in any fishing activity for which the FFV does not have a permit as required under § 600.501;

(8) Engage in any fishing activity within the EEZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the Assistant Administrator or appropriate Regional Administrator;

(9) Retain or attempt to retain, directly or indirectly, any U.S. harvested fish, unless the FFV has a permit for Activity Codes 4, 6, or 10;

(10) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under this subpart;

(11) Violate any provision of the applicable GIFA;

(12) Falsely or incorrectly complete (including by omission) a permit application or permit form as specified in § 600.501 (d) and (k);

(13) Fail to report to the Assistant Administrator within 15 days any change in the information contained in the permit application for a FFV, as specified in § 600.501(k);

(14) Assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard an FFV under this subpart;

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling, unless the observer has stated that sampling will not occur; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

(16) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties;

(17) Harass or sexually harass an authorized officer or observer;

(18) Fail to provide the required assistance to an observer as described at § 600.506 (c) and (e);

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of the FFV or its gear as required by this subpart;

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this subpart;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this subpart;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the EEZ that might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue Activity Codes 1 through 4 after those activity codes have been canceled under § 600.511;

(25) Fail to maintain health and safety standards set forth in § 600.506(d);

(26) Violate any provisions of regulations for specific fisheries of this subpart;

(27) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state, territorial, or Federal regulations;

(28) Violate any provision of this subpart, the Magnuson-Stevens Act, the applicable GIFA, any notice issued under this subpart or any permit issued under this subpart; or

(29) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any state, unless:

(i) The fishing is authorized by the Governor of that state as permitted by section 306(c) of the Magnuson-Stevens Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that state; or

(ii) The fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501, and the Governor of that state has indicated concurrence to allow fishing consisting solely of transporting fish or fish products from a point within the boundaries of that state to a point outside the United States; or

(2) Within the EEZ, or for any anadromous species or continental shelf fishery resources beyond the EEZ, unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999]

§ 600.506 Observers.

(a) *General*. To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson-Stevens Act, the appropriate Regional Administrator or Science and Research Director (see table 2 to § 600.502) may assign U.S. observers to FFV's. Except as provided

for in section 201(h)(2) of the Magnuson-Stevens Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wanting to fish within the EEZ will submit to the appropriate Regional Administrator or Science and Research Director and also to the Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910 a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of 3 consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and IRCS of each FFV intending to fish within the EEZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

(1) The appropriate Regional Administrator or Science and Research Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the EEZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than 5 days from the date listed in the quarterly schedule, the appropriate Regional Administrator or Science and Research Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph (b)(2) is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional Administrator or Science and Research Director.

(c) *Assistance to observers.* To assist the observer in the accomplishment of his or her assigned duties, the owner and operator of an FFV to which an observer is assigned must—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the FFV that are equivalent to those provided to the officers of that vessel.

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional Administrator or Science and Research Director for the purpose of embarking and debarking the observer.

(3) Allow the observer to use the FFV's communications equipment and personnel upon demand for the transmission and receipt of messages.

(4) Allow the observer access to and use of the FFV's navigation equipment and personnel upon demand to determine the vessel's position.

(5) Allow the observer free and unobstructed access to the FFV's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) Allow the observer to inspect and copy the FFV's daily log, communications log, transfer log, and any other log, document, notice, or record required by these regulations.

(7) Provide the observer copies of any records required by these regulations upon demand.

(8) Notify the observer at least 15 minutes before fish are brought on board or fish or fish products are transferred from the FFV to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(9) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) *Health and safety standards.* All foreign fishing vessels to which an observer is deployed must maintain, at all times that the vessel is in the EEZ, the following:

(1) At least one working radar.

(2) Functioning navigation lights as required by international law.

(3) A watch on the bridge by appropriately trained and experienced personnel while the vessel is underway.

(4) Lifeboats and/or inflatable life rafts with a total carrying capacity equal to or greater than the number of people aboard the vessel. Lifeboats and inflatable life rafts must be maintained in good working order and be readily available.

(5) Life jackets equal or greater in number to the total number of persons aboard the vessel. Life jackets must be

stowed in readily accessible and plainly marked positions throughout the vessel, and maintained in a state of good repair.

(6) At least one ring life buoy for each 25 ft (7.6 m) of vessel length, equipped with automatic water lights. Ring life buoys must have an outside diameter of not more than 32 inches (81.3 cm) nor less than 30 inches (76.2 cm), and must be maintained in a state of good repair. Ring life buoys must be readily available, but not positioned so they pose a threat of entanglement in work areas. They must be secured in such a way that they can be easily cast loose in the event of an emergency.

(7) At least one VHF–FM radio with a functioning channel 16 (156.8 mHz), International Distress, Safety and Calling Frequency, and one functioning AM radio (SSB-Single Side Band) capable of operating at 2182 kHz (SSB). Radios will be maintained in a radio room, chartroom, or other suitable location.

(8) At least one Emergency Position Indicating Radio Beacon (EPIRB), approved by the USCG for offshore commercial use, stowed in a location so as to make it readily available in the event of an emergency.

(9) At least six hand-held, rocket-propelled, parachute, red-flare distress signals, and three orange-smoke distress signals stowed in the pilothouse or navigation bridge in portable watertight containers.

(10) All lights, shapes, whistles, foghorns, fog bells and gongs required by and maintained in accordance with the International Regulations for Preventing Collisions at Sea.

(11) Clean and sanitary conditions in all living spaces, food service and preparation areas and work spaces aboard the vessel.

(e) *Observer transfers.* (1) The operator of the FFV must ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved. The FFV operator must provide the observer 3 hours advance notice of at-sea transfers, so that the observer may collect personal belongings, equipment, and scientific samples.

(2) The FFV's involved must provide a safe pilot ladder and conduct the transfer according to the procedures of § 600.504(d) to ensure the safety of the during the transfer.

(3) An experienced crew member must assist the observer in the small boat or raft in which the transfer is made.

(f) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional Administrator or Science and Research Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(g) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS, either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional Administrator or Science and Research Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(h) *Supplementary observer payment*—(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 600.518(b)(2). Billing schedules will be specified by the terms of the contract between NOAA and the contractors. Billings for supplementary observer coverage will be approved by

the appropriate Regional Administrator or Science and Research Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country, except as provided for by the Assistant Administrator. All bills must be paid within 10 working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (h)(4) of this section and § 600.518(d).

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels an additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers.

(ii) The costs of post-certification training required by paragraph (j)(2) of this section.

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional Administrator or Science and Research Director will designate posts of duty for supplementary observers.

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials.

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs.* The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by section 201(i)(4) of the Magnuson-Stevens Act, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer.

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional Administrator or Science and Research Director according to the requirements of the fishery to which the supplementary observer will be deployed.

(iii) The costs associated with communications with supplementary observers for transmission of data and routine messages.

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data.

(v) The costs for data editing and entry.

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer.

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(i) *Supplementary observer contractors*—(1) *Contractor eligibility.* Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary

observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services.

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers.

(iii) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation.

(iv) All data on costs.

(j) *Supplementary observers—certification, training*—(1) *Certification.* The appropriate Regional Administrator or Science and Research Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional Administrator or Science and Research Director as equivalent to that received by persons used as observers by NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202–735 (as provided by the contractor).

(k) *Supplementary observer certification suspension or revocation.* (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified in paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202–735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the USCG or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer, in writing, of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an

informal fact-finding inquiry and prepare a report and recommendations.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7074, 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999]

§ 600.507 Recordkeeping.

(a) *General.* The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged.

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the EEZ, for 3 years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the 3 years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson-Stevens Act.

(b) *Communications log.* The owner and operator of each FFV must record in a separate communications log, at the time of transmittal, the time and content of each notification made under § 600.504.

(c) *Transfer log.* Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (Activity Code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product, including quantities transferred or offloaded outside the EEZ. The operator must record in the log within 12 hours of the completion of the transfer:

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed.

(2) The product weight, by species and product (use species and product codes), of all fish transferred, to the nearest 0.01 mt.

(3) The name, IRCS, and permit number of both the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log.* (1) The owner or operator of each FFV authorized to catch fish (Activity Code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged. The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see table 2 to § 600.502) in which the FFV is engaged according to this section and in the format specified in the instructions provided with the permit or other format authorized under paragraph (i) of this section. Daily effort entries are required for each day the vessel conducts fishing operations within the EEZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a state. Each page of log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

(2) The owner or operator of each FFV authorized to catch fish (Activity Code 1) and that delivers all catches to a processing vessel, must maintain only ''SECTION ONE-EFFORT'', of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraphs (f) and (g) of this section.

(e) *Daily fishing log—contents.* The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged, and be completed according to the format and instructions provided with the permit or other format authorized under paragraph (i) of this section.

(1) ''SECTION ONE-EFFORT'' must contain on a daily basis—

(i) A consecutive page number, beginning with the first day the vessel started fishing operations within the EEZ and continuing throughout the log.

(ii) The date (based on GMT).

(iii) The FFV's name.

(iv) The FFV's IRCS.

(v) The FFV's U.S. permit number.

(vi) The FFV's noon (1200 GMT) position in geographic coordinates.

(vii) The master or operator's signature or title.

(2) ''SECTION ONE-EFFORT'' must contain, for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the calendar year.

(ii) The fishing area in which the trawl or set was completed.

(iii) The gear type.

(iv) The time the gear was set.

(v) The position of the set.

(vi) The course of the set.

(vii) The sea depth.

(viii) The depth of the set.

(ix) The duration of the set.

(x) The hauling time.

(xi) The position of the haul.

(xii) The number of pots or longline units (where applicable).

(xiii) The average number of hooks per longline unit (where applicable).

(xiv) The trawl speed (where applicable).

(xv) The mesh size of the trawl's codend (where applicable).

(xvi) The estimated total weight of the catch for the trawl of set, to at least the nearest metric ton round weight.

(3) ''SECTION TWO-CATCH'' must contain, for each trawl or set—

(i) The consecutive set or trawl number from ''SECTION ONE''.

(ii) The catch of each allocated species or species group to at least the nearest 0.1 mt round weight.

(iii) The prohibited species catch to at least the nearest 0.1 mt round weight or by number, as required by the regulations for the fishery in which the FFV is engaged.

(iv) The species code of each marine mammal caught and its condition when released.

(4) ''SECTION TWO-CATCH'' must contain, on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught.

(ii) For each allocated species—the amount, to at least the nearest 0.1 mt, and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch by fishing area; the daily catch for all fishing areas; and the cumulative total catch.

(iii) For the total catch of allocated species—the amount to at least the nearest 0.1 mt and the daily disposition, daily total catch by fishing area, daily total catch for all fishing areas, and cumulative total catch.

(iv) The catch by fishing area, daily total, and cumulative total of each prohibited species.

(5) ''SECTION THREE—PRODUCTION'' must contain, on a daily basis, for each allocated species caught and product produced—

(i) The product by species code and product type.

(ii) The daily product recovery rate of each species and product.

(iii) The daily total product produced by species to at least the nearest 0.01 mt.

(iv) The cumulative total of each product to at least the nearest 0.01 mt.

(v) The cumulative amount of product transferred.

(vi) The balance of product remaining aboard the FFV.

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest 0.01 mt.

(viii) Transferred amount and balance of fishmeal and fish oil aboard to at least the nearest 0.01 mt.

(f) *Daily consolidated fishing or joint venture log.* The operator of each FFV that receives unsorted, unprocessed fish from foreign catching vessels (Activity Code 2) for processing or receives U.S.-harvested fish from U.S. fishing vessels in a joint venture (Activity Code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. or foreign fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged. This log is separate and in addition to the log required by paragraph

(d) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged, on a daily and cumulative basis, according to this section and in the format specified in the instructions provided with the permit or other format authorized under paragraph (i) of this section. Receipts of fish caught outside the EEZ must be included. Each page of the log may contain entries pertaining to only one day's fishing operations.

(g) *Daily joint venture log—contents.* Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged, and be completed according to the format and instructions provided with the permit or other format authorized under paragraph (i) of this section.

(1) ''SECTION ONE-EFFORT'' must contain, on a daily basis, that information required in paragraph (e)(1) of this section.

(2) ''SECTION ONE-EFFORT'' must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the calendar year.

(ii) The name of the U.S. fishing vessel or the name and IRCS of the foreign fishing vessel the codend was received from.

(iii) The fishing area where the codend was received.

(iv) The time the codend was received.

(v) The position the codend was received.

(vi) The estimated weight of the codend to at least the nearest metric ton round weight.

(3) ''SECTION TWO-CATCH'' must contain, for each codend received—

(i) The consecutive codend number from ''SECTION ONE''.

(ii) The receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to at least the nearest 0.1 mt round weight.

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to at least the nearest 0.1 mt round weight.

(iv) The species code of each marine mammal received and its condition when released.

(4) ''SECTION TWO-CATCH'' must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received.

(ii) The daily disposition, as described in paragraph (g)(3)(ii) of this section, daily total, and cumulative total receipts of each authorized species or species groups.

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups.

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (g)(3)(iii) of this section.

(5) ''SECTION THREE—PRODUCTION'' must contain, on a daily basis, for each authorized species or species group received and product produced, that information required in paragraph (e)(5) of this section.

(h) *Daily log maintenance.* The logs required by paragraphs (e) through (g) of this section must be maintained separately for each fishery (see table 2 to § 600.502).

(1) The effort section (all of ''SECTION ONE'') of the daily logs must be updated within 2 hours of the hauling or receipt time. The catch or receipt by trawl or set (''SECTION TWO'') must be entered within 12 hours of the hauling or receipt time. The daily and cumulative total catch or receipts (''SECTION TWO'') and the production portion (''SECTION THREE'') of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition ''C'' or ''M'') must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights of discarded or returned fish (disposition ''D'' or ''R'') must be based on the most accurate method available to the vessel, either actual count, scale round weight, or estimated

deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed 5 percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink, with corrections to be accomplished by lining out and rewriting, rather than erasure.

(i) Alternative log formats. As an alternative to the use of the specific formats provided, a Nation may submit a proposed log format for FFV's of that Nation for a general type of fishery operation in a fishery (i.e., joint venture operations) to the appropriate Regional Administrator and the USCG commander (see tables 1 and 2 to § 600.502). With the agreement of the USCG commander, the Regional Administrator may authorize the use of that log format for vessels of the requesting Nation.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.508 Fishing operations.

(a) *Catching.* Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the FFV is engaged. Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting.* Each FFV authorized for Activity Codes 1 through 6 may scout for fish. Scouting may be conducted only in the fisheries area authorized by the scouting vessel's permit and under such other circumstances as may be designated in this subpart or the permit.

(c) *Processing.* Each FFV with Activity Code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that Nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under Activity Code 4, and under such other circumstances as may be designated in this subpart or the permit.

(d) *Support.* Each FFV with Activity Codes 1, 2, 3, 5, or 8 may support other permitted FFV's. Each FFV with Activity Codes 4 or 6 may support U.S. vessels. Support operations may be conducted only in the fisheries areas authorized by the supporting vessel's permit, and under such other circumstances as may be designated in this subpart or the permit.

(e) *Joint ventures.* Each FFV with Activity Code 4 in addition to Activity Codes 1 or 2 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the EEZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels, despite closures under § 600.511(a).

(f) *Internal waters.* For FFV's authorized under section 306(c) of the Magnuson-Stevens Act:

(1) Each FFV may engage in fish processing and support of U.S. fishing vessels within the internal waters of that state in compliance with terms and conditions set by the authorizing Governor.

(2) The owner or operator of each FFV must submit weekly reports on the amount of fish received from vessels of the United States and the location(s) where such fish were harvested.

(i) Reports must include:

(A) Vessel identification information for the FFV.

(B) Date of each receipt of fish.

(C) Amount of fish received, by species.

(D) Location(s) from which the fish received were harvested and the name and official number of the vessel of the United States that harvested the fish.

(ii) Owners or operators of FFV's processing fish in internal waters

under the provisions of this paragraph (f) must request, from the Regional Administrator, the requirements regarding timing and submission of the reports, at least 15 days prior to the first receipt of fish from a vessel of the United States. The Regional Administrator shall stipulate the timing and submission requirements in writing.

(g) *Transshipping.* Each FFV with Activity Code 1, 2, 3, 4, 5, 6, 7, 8, or 10 may transship in accordance with this subpart and the vessel's permit.

[61 FR 32540, June 24, 1996, as amended at 62 FR 27183, May 19, 1997; 62 FR 34397, June 26, 1997; 64 FR 39020, July 21, 1999]

§ 600.509 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch of fish received as soon as possible and return all prohibited species and species parts to the sea immediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged. All prohibited species must be recorded in the daily fishing log and other fishing logs as specified by the regulations for the fishery in which the FFV is engaged.

(c) All species of fish that an FFV has not been specifically allocated or authorized under this subpart to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught and retained in violation of this section.

§ 600.510 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The operator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing, as required by the regulations for the fishery in which the FFV is engaged.

(b) *Gear conflicts.* The operator of each FFV that is involved in a conflict or that retrieves the gear of another vessel must immediately notify the appropriate USCG commander identified in tables 1 and 2 to § 600.502 and request disposal instructions. Each report must include:

(1) The name of the reporting vessel.

(2) A description of the incident and articles retrieved, including the amount, type of gear, condition, and identification markings.

(3) The location of the incident.

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the EEZ may not dump overboard, jettison or otherwise discard any article or substance that may interfere with other fishing vessels or gear, or that may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate USCG commander or other authorized officer. These articles and substances include, but are not limited to, fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear in the EEZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the EEZ, the vessel operator must immediately report the incident to the appropriate USCG Commander indicated in tables 1 and 2 to § 600.502, and give the information required in paragraph (b) of this section.

§ 600.511 Fishery closure procedures.

(a) Activity Codes 1 and 2 for a fishery are automatically canceled in the

following cases, unless otherwise specified by regulations specific to a fishery, when—

(1) The OY for any allocated species or species group has been reached in that fishery;

(2) The TALFF or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 600.518(b)(2) is not established and maintained.

(b) Activity Code 4 is automatically canceled when—

(1) The OY for a species with a JVP amount is reached;

(2) The JVP amount for a species or species group is reached; or

(3) The letter of credit required in § 600.518(b)(2) is not established and maintained.

(c) *Notification*. (1) The Regional Administrator is authorized to close a fishery on behalf of NMFS. The Regional Administrator will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each Nation and the owners and operators of all FFV's of that Nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation*. Vessel activity reports, U.S. surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts may be initiated by the designated representative of each Nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration*. Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 600.518(b)(2) is reestablished.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.512 Scientific research.

(a) *Scientific research activity*. Persons planning to conduct scientific research activities in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Administrator, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required under any other applicable law. If the Regional Administrator, Director, or designee, after review of a research plan, determines that it does not constitute scientific research activity, but rather fishing, the Regional Administrator, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports*. Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch,

to the appropriate Science and Research Director.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.513 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, and §§ 600.10, 600.504(a)(1), and 600.505 (as applicable). Such vessels may conduct recreational fishing within the EEZ and within the boundaries of a state. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person aboard any foreign vessel conducting recreational fishing must comply with any Federal laws or regulations applicable to the domestic fishery while in the EEZ, and any state laws or regulations applicable while in state waters.

§ 600.514 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and state statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws that implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

§ 600.515 Interpretation of 16 U.S.C. 1857(4).

Section 307(4) of the Magnuson-Stevens Act prohibits any fishing vessel other than a vessel of the United States (foreign fishing vessel) from operating in the EEZ if all of the fishing gear on board the vessel is not stowed in compliance with that section ''unless such vessel is authorized to engage in fishing in the area in which the vessel is operating.'' If such a vessel has a permit authorization that is limited to fishing activities other than catching, taking or harvesting (such as support, scouting or processing activities), it must have all of its fishing gear stowed at all times while it is in the EEZ. If such a vessel has a permit authorization to engage in catching, taking or harvesting activities, but such authorization is limited to a specific area within the EEZ, and/or to a specific period of time, the vessel must have all of its fishing gear stowed while it is in the EEZ, except when it is in the specific area authorized, and/or during the specific period of time authorized.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.516 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the OY of such fishery that will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published in the FEDERAL REGISTER. Adjustments to those numbers will be published in the FEDERAL REGISTER upon occasion or as directed by regulations implementing FMPs. For current apportionments, contact the appropriate Regional Administrator or the Director.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.517 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 600.518 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 600.501 must be accompanied by a fee. The amount of the fee will be determined in accordance with the procedures for determining administrative costs of each special product or service contained in the NOAA Finance Handbook, which is available upon request from the International Fisheries Division (see address at § 600.501(d)(1)). The fee is specified with the application form. At the time the application is submitted, a check for the fees, drawn on a U.S. bank, payable to the order of ''Department of Commerce, NOAA,'' must be sent to the Assistant Administrator. The permit fee payment must be accompanied by a list of the vessels for which the payment is made. In the case of applications for permits authorizing activity code 10, the permit application fee will be waived if the applicant provides satisfactory documentary proof to the Assistant Administrator that the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation. The documentation presented (e.g., copy of foreign fishing regulations applicable to vessels of the United States) must clearly exempt vessels of the United States from such a fee.

(b) *Poundage fees.* (1) *Rates.* If a Nation chooses to accept an allocation, poundage fees must be paid at the rate specified in the following table.

TABLE—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species fees	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring	61.76
5. Mackerel, Atlantic	58.33
6. Other groundfish	119.09
7. Squid, *Illex*	103.98
8. Squid, *Loligo*	245.73

(2) *Method of payment of poundage fees and observer fees.* (i) If a Nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocation at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the observer fees required by paragraph (c) of this section. The L/C must—

(A) Be irrevocable.

(B) Be with a bank subscribing to ICC Pub. 290.

(C) Designate ''Department of Commerce, NOAA'' as beneficiary;

(D) Allow partial withdrawals.

(E) Be confirmed by a U.S. bank.

(ii) The customer must pay all commissions, transmission, and service charges. No fishing will be allowed until the L/C is established, and authorized written notice of its issuance is provided to the Assistant Administrator.

(3) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Administrator will reconcile catch figures with each country following the procedures of § 600.511(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Administrator will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Administrator during the

next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Observer fees.* The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a L/C as prescribed in § 600.518(b)(2). During the fiscal year, payment will be withdrawn from the L/C as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(d) *Financial assurances.* (1) A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Assistant Administrator to provide financial assurances. Such assurances may be required if—

(i) Civil and criminal penalties assessed against fishing vessels of the Nation have not effectively deterred violations;

(ii) Vessels of that Nation have engaged in fishing in the EEZ without proper authorization to conduct such activities;

(iii) The Nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(iv) Enforcement of Magnuson-Stevens Act civil or criminal judgments in the courts of a foreign nation is unattainable.

(2) The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. Government.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999]

§ 600.520 Northwest Atlantic Ocean fishery.

(a) *Purpose.* Sections 600.520 and 600.525 regulate all foreign fishing conducted under a GIFA within the EEZ in the Atlantic Ocean north of 35°00′ N. lat.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *Time and area restrictions.* (i) Fishing, including processing, scouting, and support of foreign or U.S. vessels, is prohibited south of 35°00′ N. lat., and north and east of a line beginning at the shore at 44°22′ N. lat., 67°52′ W. long. and intersecting the boundary of the EEZ at 44°11′12″ N. lat., 67°16′46″ W. long.

(ii) The Regional Administrator will consult with the Council prior to giving notice of any area or time restriction. NMFS will also consult with the USCG if the restriction is proposed to reduce gear conflicts. If NMFS determines after such consultation that the restriction appears to be appropriate, NMFS will publish the proposed restriction in the FEDERAL REGISTER, together with a summary of the information on which the restriction is based. Following a 30-day comment period, NMFS will publish a final action.

(iii) The Regional Administrator may rescind any restriction if he/she determines that the basis for the restriction no longer exists.

(iv) Any notice of restriction shall operate as a condition imposed on the permit issued to the foreign vessels involved in the fishery.

(3) *TALFF.* The TALFFs for the fisheries of the Northwest Atlantic Ocean are published in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Administrator.

(4) *Species definitions.* The category ''other finfish'' used in TALFFs and in allocations includes all species except:

(i) The other allocated species, namely: Short-finned squid, long-finned squid, Atlantic herring, Atlantic mackerel, river herring (includes alewife, blueback herring, and hickory shad), and butterfish.

(ii) The prohibited species, namely: American plaice, American shad, Atlantic cod, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, ocean pout, pollock, red hake, scup, sea turtles, sharks (except

dogfish), silver hake, spot, striped bass, summer flounder, tilefish, yellowtail flounder, weakfish, white hake, windowpane flounder, winter flounder, witch flounder, Continental Shelf fishery resources, and other invertebrates (except nonallocated squids).

(5) *Closures.* The taking of any species for which a Nation has an allocation is permitted, provided that:

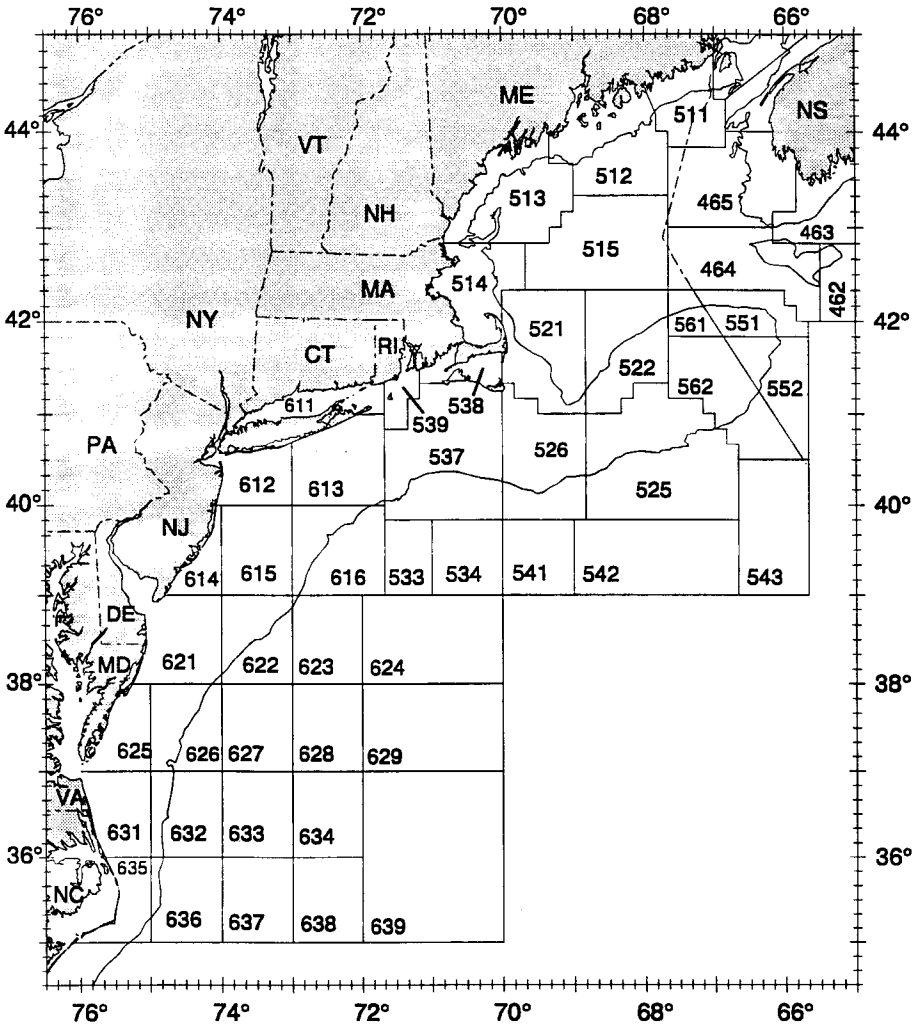
(i) The vessels of the foreign nation have not caught the allocation of that Nation for any species or species group (e.g., ''other finfish''). When vessels of a foreign nation have caught an applicable allocation of any species, all further fishing other than scouting, processing, or support by vessels of that Nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to ensure that the reaching of an allocation for one species does not result in the premature closing of a Nation's fishery for other allocated species.

(ii) The fishery has not been closed for other reasons under § 600.511.

(6) *Allocation utilization.* Foreign fishing vessels may elect to retain or discard allocated species; however, the computation of allocation utilization and fee refunds will be based on the total quantity of that species that was caught. Prohibited species must always be returned to the sea as required under § 600.509.

(c) *Fishing areas.* For the purposes of the Northwest Atlantic Ocean fishery, fishing areas are that portion of the EEZ shown inside the boundaries of the ''three digit statistical areas'' described in Figure 1 to this section.

Figure 1 to § 600.520--Fishing Areas of the Northwest Atlantic Ocean Fisheries



[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.525 Atlantic herring fishery.

(a) *Initial specifications.* The initial specifications of OY, DAH, DAP, JVP, TALFF, and reserve (if any) have been established by the PMP for Atlantic herring approved on July 6, 1995. These annual specifications will remain in effect unless adjusted pursuant to the provisions specified in paragraph (b) of this section.

(b) *Procedures to adjust initial specifications.* NMFS may adjust these initial specifications upward or downward to produce the greatest overall benefit to the United States at any time prior to or during the fishing years for which the initial specifications are set by publishing notification in the FEDERAL

REGISTER with the reasons for such adjustments. Any notice of adjustment may provide for public comment. Adjustments to the initial specifications may take into account the following information:

(1) The estimated domestic processing capacity and extent to which it will be used.;

(2) Landings and catch statistics.;

(3) Stock assessments.

(4) Relevant scientific information.

Subpart G—Preemption of State Authority Under Section 306(b)

§ 600.605 General policy.

It is the policy of the Secretary that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 600.610 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of state management authority over a fishery are:

(1) The fishing in a fishery that is covered by an FMP implemented under the Magnuson-Stevens Act is engaged in predominately within the EEZ and beyond such zone.

(2) A state has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such FMP.

(b) Whether fishing is engaged in ''predominately'' within or beyond the EEZ will be determined after consideration of relevant factors, including but not limited to, the catch (based on numbers, value, or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period, and in light of historical patterns of the distribution of catch or fishing effort for such stock or stocks of fish.

(c) Whether relevant effects are substantial will be determined after consideration of the magnitude of such actual or potential effects. Relevant to this determination are various factors, including but not limited to, the proportion of the fishery (stock or stocks of fish and fishing for such stocks) that is subject to the effects of a particular state's action or omission, the characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery, and the similarity or dissimilarity between the goals, objectives, or policies of the state's action or omission and the management goals or objectives specified in the FMP for the fishery or between the state and Federal conservation and management measures of the fishery.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.615 Commencement of proceedings.

(a) *Notice of proposed preemption.* (1) If a proceeding under this part is deemed necessary, the Administrator must issue a notice of proposed preemption to the Attorney General of the State or States concerned. The notice will contain:

(i) A recital of the legal authority and jurisdiction for instituting the proceeding.

(ii) A concise statement of the § 600.610 factual findings for Federal preemption upon which the notice is based.

(iii) The time, place, and date of the hearing.

(2) The notice of proposed preemption will also be published in the FEDERAL REGISTER. This notification may be combined with any notice of proposed rulemaking published under paragraph (d)(1) of this section.

(b) *Response.* The state will have the opportunity to respond in writing to the notice of proposed preemption.

(c) *Amendment.* The Administrator may, at any time prior to the Secretary's decision, withdraw the notice of proposed preemption. Upon motion of either party before the record is closed, the administrative law judge may amend the notice of proposed preemption.

(d) *Proposed regulations*—(1) *In general.* If additional regulations are required to govern fishing within the

boundaries of a state, the Administrator may publish proposed regulations in the FEDERAL REGISTER concurrently with issuing the notification indicated in paragraph (a) of this section.

(2) *Emergency actions.* Nothing in this section will prevent the Secretary from taking emergency action under section 305(c) of the Magnuson-Stevens Act.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.620 Rules pertaining to the hearing.

(a) The civil procedure rules of the NOAA currently set forth in 15 CFR part 904, subpart C (or as subsequently amended), apply to the proceeding after its commencement by service of notice (pursuant to § 600.615) and prior to the Secretary's decision (§ 600.625), except that the following sections will not apply:

(1) 15 CFR 904.201 (Definitions);

(2) 15 CFR 904.206(a)(1) (Duties and powers of Judge); and

(3) 15 CFR 904.272 (Administrative review of decision).

(b) *Additional duties and powers of judge*—(1) *Time periods.* The administrative law judge is authorized to modify all time periods pertaining to the course of the hearing (under §§ 600.615 and 600.620) to expedite the proceedings, upon application and appropriate showing of need or emergency circumstances by a party.

(2) *Intervention.* Intervention by persons not parties is not allowed.

§ 600.625 Secretary's decision.

(a) The Secretary will, on the basis of the hearing, record the administrative law judge's recommended decision:

(1) Accept or reject any of the findings or conclusions of the administrative law judge and decide whether the factual findings exist for Federal preemption of a state's authority within its boundaries (other than in its internal waters) with respect to the fishery in question;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Remand the case to the administrative law judge for further proceedings as may be appropriate, along with a statement of reasons for the remand.

(b) *Notification.* (1) If the factual findings for Federal preemption are determined to exist, the Secretary will notify in writing the Attorney General of that state and the appropriate Council(s) of the preemption of that state's authority. The Secretary will also direct the Administrator to promulgate appropriate regulations proposed under § 600.615(d) and otherwise to begin regulating the fishery within the state's boundaries (other than in its internal waters).

(2) If the factual findings for Federal preemption are determined not to exist, the Secretary will notify, in writing, the Attorney General of the state and the appropriate Council(s) of that determination. The Secretary will also direct the Administrator to issue a notice withdrawing any regulations proposed under § 600.615(d).

§ 600.630 Application for reinstatement of state authority.

(a) *Application or notice.* (1) At any time after the promulgation of regulations under § 600.625(b)(1) to regulate a fishery within a state's boundaries, the affected state may apply to the Secretary for reinstatement of state authority. The Secretary may also serve upon such state a notice of intent to terminate such Federal regulation. A state's application must include a clear and concise statement of:

(i) The action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the FMP; or

(ii) Any changed circumstances that affect the relationship of the state's action or omission to take action to the carrying out of the FMP (including any amendment to such plan); and

(iii) Any laws, regulations, or other materials that the state believes support the application.

(2) Any such application received by the Secretary or notice issued to the State will be published in the FEDERAL REGISTER.

(b) *Informal response.* The Secretary has sole discretion to accept or reject the application or response. If the Secretary accepts the application or rejects any responses and finds that the

reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

(c) *Hearing.* The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 600.620. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended decision to the Secretary. If the Secretary, upon consideration of the state's application or any response to the notice published under § 600.630(a)(2), the hearing record, the recommended decision, and any other relevant materials finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

Subpart H—General Provisions for Domestic Fisheries

§ 600.705 Relation to other laws.

(a) *General.* Persons affected by these regulations should be aware that other Federal and state statutes and regulations may apply to their activities. Vessel operators may wish to refer to USCG regulations found in the Code of Federal Regulations title 33—Navigation and Navigable Waters and 46—Shipping; 15 CFR part 904, subpart D—Permit Sanctions and Denials; and title 43—Public Lands (in regard to marine sanctuaries).

(b) *State responsibilities.* Certain responsibilities relating to data collection and enforcement may be performed by authorized state personnel under a state/Federal agreement for data collection and a tripartite agreement among the state, the USCG, and the Secretary for enforcement.

(c) *Submarine cables.* Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to the submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(d) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth in part 229 of this title.

(e) *Halibut fishing.* Fishing for halibut is governed by regulations of the International Pacific Halibut Commission set forth at part 300 of this title.

(f) *Marine sanctuaries.* All fishing activity, regardless of species sought, is prohibited under 15 CFR part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 600.710 Permits.

Regulations pertaining to permits required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.715 Recordkeeping and reporting.

Regulations pertaining to records and reports required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.720 Vessel and gear identification.

Regulations pertaining to special vessel and gear markings required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.725 General prohibitions.

It is unlawful for any person to do any of the following:

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, or export, any fish or parts thereof taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NOAA and/or any regulation or permit issued under the Magnuson-Stevens Act.

(b) Transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel, while such vessel is in the EEZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson-Stevens Act, which authorizes the receipt by such vessel of U.S.-harvested fish.

(c) Fail to comply immediately with enforcement and boarding procedures specified in § 600.730.

(d) Refuse to allow an authorized officer to board a fishing vessel or to enter areas of custody for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(e) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel or aircraft.

(f) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(g) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson-Stevens Act or any other statute administered by NOAA.

(h) Resist a lawful arrest for any act prohibited under the Magnuson-Stevens Act or any other statute administered by NOAA.

(i) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, offer of sale, possession, transport, import, export, or transfer of any fish, or attempts to do any of the above.

(j) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(k) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson-Stevens Act or any other statute administered by NOAA.

(l) Fail to report catches as required while fishing pursuant to an exempted fishing permit.

(m) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state or Federal regulations.

(n) Trade, barter, or sell; or attempt to trade, barter, or sell fish possessed or retained while fishing pursuant to an authorization for an exempted educational activity.

(o) Harass or sexually harass an authorized officer or an observer.

(p) Fail to submit to a USCG safety examination when required by NMFS pursuant to § 600.746.

(q) Fail to display a Commercial Fishing Vessel Safety Examination decal or a valid certificate of compliance or inspection pursuant to § 600.746.

(r) Fail to provide to an observer, a NMFS employee, or a designated observer provider information that has been requested pursuant to § 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 600.746.

(s) Fish without an observer when the vessel is required to carry an observer.

(t) Assault, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(u) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

(v) The use of any gear or participation in a fishery not on the following list of authorized fisheries and gear is prohibited after December 1, 1999. A fish, regardless whether targeted, may

be retained only if it is taken within a listed fishery, is taken with a gear authorized for that fishery, and is taken in conformance with all other applicable regulations. Listed gear can only be used in a manner that is consistent with existing laws and regulations. The list of fisheries and authorized gear does not, in any way, alter or supersede any definitions or regulations contained elsewhere in this chapter. A person or vessel is prohibited from engaging in fishing or employing fishing gear when such fishing gear is prohibited or restricted by regulation under an FMP or other applicable law. However, after December 1, 1999, an individual fisherman may notify the appropriate Council, or the Director, in the case of Atlantic highly migratory species, of the intent to use a gear or participate in a fishery not already on the list. Ninety days after such notification, the individual may use the gear or participate in that fishery unless regulatory action is taken to prohibit the use of the gear or participate in the fishery (*e.g.*, through emergency or interim regulations). The list of authorized fisheries and gear is as follows:

Fishery	Authorized gear types
I. New England Fishery Management Council (NEFMC)	
1. Atlantic Sea Scallop Fishery (FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Hand harvest fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
2. Iceland Scallop Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
3. Atlantic Salmon Fishery (FMP)	No harvest or possession in the EEZ.
4. Striped Bass Fishery (Non-FMP)	No harvest or possession in the EEZ.
5. Northeast (NE) Multispecies Fishery (FMP):	
A. NE multispecies sink gillnet fishery.	A. Gillnet.
B. North Atlantic bottom trawl fishery.	B. Trawl.
C. Groundfish hook and line fishery	C. Longline, handline, rod and reel.
D. Mixed species trap and pot fishery.	D. Trap, pot.
E. Dredge fishery	E. Dredge.
F. Seine fishery	F. Seine.
G. Recreational fishery	G. Rod and reel, handline, spear.
6. American Lobster Fishery (FMP):	
A. Lobster pot and trap fishery	A. Pot, trap.
B. North Atlantic bottom trawl fishery.	B. Trawl.
C. Dredge fishery	C. Dredge.
D. Hand harvest fishery	D. Hand harvest.
E. Gillnet fishery	E. Gillnet.
F. Recreational fishery	F. Pot, trap, hand harvest.
7. Atlantic Herring Fishery (FMP):	
A. Trawl fishery	A. Trawl.
B. Purse seine fishery	B. Purse seine.
C. Gillnet fishery	C. Gillnet.
D. Herring pair trawl fishery	D. Pair trawl.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Hook and line, gillnet.
8. Spiny Dogfish Fishery (FMP jointly managed by MAFMC and NEFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
9. Atlantic Bluefish Fishery (FMP managed by MAFMC):	
A. Pelagic longline and hook and line fishery.	A. Longline, handline.
B. Seine fishery	B. Purse seine, seine.
C. Mixed species pot and trap fishery.	C. Pot, trap.
D. Bluefish, croaker, flounder trawl fishery.	D. Trawl.
E. Gillnet fishery	E. Gillnet.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot, spear.
10. Atlantic Mackerel, Squid and Butterfish Fishery (FMP managed by the MAFMC):	
A. Mackerel, squid, and butterfish trawl fishery.	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline and hook-and-line fishery.	C. Longline, handline, rod and reel.
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot and trap fishery.	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Dip net fishery	G. Dip net.
H. Bandit gear fishery	H. Bandit gear.
I. Recreational fishery	I. Rod and reel, handline, pot, spear.
11. Surf Clam and Ocean Quahog Fishery (FMP managed by the MAFMC):	
A. Commercial fishery	A. Dredge, hand harvest.
B. Recreational fishery	B. Hand harvest.
12. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line fishery.	D. Hook and line.

Fishery	Authorized gear types
E. Recreational fishery	E. Hook and line, snagging, cast nets.
13. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line, spear.
14. Atlantic Mussel and Sea Urchin Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Hand harvest fishery	B. Hand harvest.
C. Recreational fishery	C. Hand harvest.
15. Atlantic Skate Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Hook-and-line fishery	C. Longline and handline.
D. Dredge fishery	D. Dredge.
E. Recreational fishery	E. Rod and reel.
16. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
17. Northern Shrimp Fishery (Non-FMP):	
A. Shrimp trawl fishery	A. Trawl.
B. Shrimp pot fishery	B. Pot.
18. Monkfish Fishery (FMP jointly managed by NEFMC and MAFMC):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline fishery	C. Longline.
D. Dredge fishery	D. Dredge.
E. Trap and pot fishery	E. Trap, pot.
F. Recreational fishery	F. Rod and reel, spear.
19. Summer Flounder, Scup, Black Sea Bass Fishery (FMP managed by MAFMC):	
A. Trawl fishery	A. Trawl.
B. Longline and hook and line fishery.	B. Longline, handline.
C. Mixed species pot and trap fishery.	C. Pot, trap.
D. Gillnet fishery	D. Gillnet.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Rod and reel, handline, pot, trap, spear.
20. Hagfish Fishery (Non-FMP)	Trap, pot.
21. Tautog Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Pot and trap fishery	B. Pot, trap.
C. Rod and reel, hook and line fishery.	C. Rod and reel, handline, hook and line.
D. Trawl fishery	D. Trawl.
E. Spear fishery	E. Spear.
F. Fyke net fishery	F. Fyke net.
G. Recreational fishery	G. Rod and reel, hook and line, handline, spear.
22. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net, pot, trap, dip net, bully net, snare.
23. Commercial Fishery (Non-FMP)	Trawl, pot, trap, gillnet, pound net, dredge, seine, handline, longline, hook and line, rod and reel, hand harvest, purse seine, spear, bandit gear, powerhead, dip net, bully net, snare, cast net, barrier net, slurp gun, allowable chemicals.
II. Mid-Atlantic Fishery Management Council (MAFMC)	
1. Summer Flounder, Scup, Black Sea Bass Fishery (FMP):	
A. Trawl fishery	A. Trawl.
B. Pelagic longline and hook and line fishery.	B. Longline, handline, rod and reel.
C. Mixed species pot and trap fishery.	C. Pot, trap.
D. Gillnet fishery	D. Gillnet.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Rod and reel, handline, pot, trap, spear.
2. Atlantic Bluefish Fishery (FMP):	
A. Bluefish, croaker, and flounder trawl fishery.	A. Trawl.
B. Pelagic longline and hook and line fishery.	B. Longline, handline, bandit gear, rod and reel.
C. Mixed species pot and trap fishery.	C. Pot, trap.
D. Gillnet fishery	D. Gillnet.
E. Seine fishery	E. Purse seine, seine.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot, spear.
3. Atlantic Mackerel, Squid, and Butterfish Fishery (FMP):	
A. Mackerel, squid, and butterfish trawl fishery.	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline and hook-and-line fishery.	C. Longline, handline, rod and reel.
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot and trap fishery.	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Dip net fishery	G. Dip net.
H. Bandit gear fishery	H. Bandit gear.
I. Recreational fishery	I. Rod and reel, handline, pot, spear.
4. Surf Clam and Ocean Quahog Fishery (FMP):	
A. Commercial fishery	A. Dredge, hand harvest.
B. Recreational fishery	B. Hand harvest.
5. Atlantic Sea Scallop Fishery (FMP managed by NEFMC):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Hand harvest fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
6. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line fishery.	D. Hook and line.

Fishery	Authorized gear types
E. Recreational fishery	E. Hook and line, snagging, cast nets.
7. Striped Bass Fishery (Non-FMP)	No harvest or possession in the EEZ.
8. Northern Shrimp Trawl Fishery (Non-FMP).	Trawl.
9. American Lobster Fishery (FMP managed by NEFMC):	
A. Pot and trap fishery	A. Pot, trap.
B. Hand harvest fishery	B. Hand harvest.
C. Trawl fishery	C. Trawl.
D. Dredge fishery	D. Dredge.
E. Gillnet fishery	E. Gillnet.
F. Recreational fishery	F. Pot, trap, hand harvest.
10. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line, rod and reel.
B. Recreational fishery	B. Hook and line, spear.
11. Whelk Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Pot and trap fishery	B. Pot, trap.
C. Dredge	C. Dredge.
D. Pound net, gillnet, seine	D. Pound net, gillnet, seine.
E. Recreational fishery	E. Hand harvest.
12. Monkfish Fishery (FMP jointly managed by NEFMC and MAFMC):	
A. Trawl fishery	A. Trawl.
B. Longline fishery	B. Longline, rod and reel.
C. Gillnet fishery	C. Gillnet.
D. Dredge fishery	D. Dredge.
E. Trap and pot fishery	E. Trap and pot.
F. Recreational fishery	F. Rod and reel, spear.
13. Tilefish Fishery (Non-FMP):	
A. Groundfish hook-and-line fishery	A. Longline, handline, rod and fishery reel.
B. Trawl fishery	B. Trawl.
C. Recreational fishery	C. Rod and reel, spear.
14. Spiny Dogfish Fishery (FMP jointly managed by MAFMC and NEFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
15. Tautog Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Pot and trap fishery	B. Pot, trap.
C. Rod and reel, hook and line handline fishery.	C. Rod and reel, hook and line, handline.
D. Trawl fishery	D. Trawl.
E. Spear fishery	E. Spear.
F. Fyke net fishery	F. Fyke net.
G. Recreational fishery	G. Rod and reel, handline, hook and line, spear.
16. Coastal Gillnet Fishery (Non-FMP):	Gillnet
17. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net.
18. NE Multispecies Fishery (FMP managed by NEFMC):	
A. NE multispecies sink gillnet fishery.	A. Gillnet.
B. North Atlantic bottom trawl fishery.	B. Trawl.
C. Groundfish hook and line	C. Longline, handline, rod and fishery reel.
D. Mixed species trap and pot fishery.	D. Trap, pot.
E. Dredge fishery	E. Dredge.
F. Seine fishery	F. Seine.
G. Recreational fishery	G. Rod and reel, handline, spear.
19. Atlantic Skate Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Hook-and-line fishery	C. Longline and handline.
D. Dredge fishery	D. Dredge.
E. Recreational fishery	E. Rod and reel.
20. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
21. Atlantic Herring Fishery (FMP managed by the NEFMC):	
A. Trawl fishery	A. Trawl.
B. Purse seine fishery	B. Purse seine.
C. Gillnet fishery	C. Gillnet.
D. Herring pair trawl fishery	D. Pair trawl.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Hook and line, gillnet.
22. South Atlantic Snapper-Grouper Fishery (FMP managed by the SAFMC):	
A. Commercial fishery	A. Longline, rod and reel, bandit gear, handline, spear, powerhead.
B. Black sea bass trap and pot fishery.	B. Pot, trap.
C. Wreckfish fishery	C. Rod and reel, bandit gear, handline.
D. Recreational fishery	D. Handline, rod and reel, bandit gear, spear, powerhead.
23. South Atlantic Coastal Migratory Pelagics Fishery (FMP managed by the SAFMC):	
A. Commercial Spanish mackerel fishery.	A. Handline, rod and reel, bandit gear, gillnet, cast net.
B. Commercial king mackerel fishery.	B. Handline, rod and reel, bandit gear.
C. Other commercial coastal migratory pelagics fishery.	C. Longline, handline, rod and reel, bandit gear.

Fishery	Authorized gear types
D. Recreational fishery	D. Bandit gear, rod and reel, handline, spear.
24. Calico Scallops Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Dredge fishery	B. Dredge.
C. Recreational fishery	C. Hand harvest.
25. Sargassum Fishery (Non-FMP)	Trawl.
26. South Atlantic Shrimp Fishery (FMP).	Trawl.
27. Commercial Fishery (Non-FMP)	Trawl, pot, trap, gillnet, pound net, dredge, seine, handline, longline, hook and line, rod and reel, spear.'
III. South Atlantic Fishery Management Council	
1. Golden Crab Fishery (FMP)	Trap.
2. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
3. Atlantic Red Drum Fishery (FMP)	No harvest or possession in the EEZ.
4. Coral and Coral Reef Fishery (FMP):	
A. Octocoral commercial fishery	Hand harvest.
B. Live rock aquaculture fishery	Hand harvest.
5. South Atlantic Shrimp Fishery (FMP).	Trawl.
6. South Atlantic Snapper-Grouper Fishery (FMP):	
A. Commercial fishery	A. Longline, rod and reel, bandit gear, handline, spear, powerhead.
B. Black sea bass trap and pot fishery.	B. Pot, trap.
C. Wreckfish fishery	C. Rod and reel, bandit gear, handline.
D. Recreational fishery	D. Handline, rod and reel, bandit gear, spear, powerhead.
7. South Atlantic Spiny Lobster Fishery (FMP):	
A. Commercial fishery	A. Trap, pot, dip net, bully net, snare, hand harvest.
B. Recreational fishery	B. Trap, pot, dip net, bully net, snare, hand harvest.
8. South Atlantic Coastal Migratory Pelagics Fishery (FMP):	
A. Commercial Spanish mackerel fishery.	A. Handline, rod and reel, bandit gear, gillnet, cast net.
B. Commercial king mackerel fishery.	B. Handline, rod and reel, bandit gear.
C. Other commercial coastal migratory pelagics fishery.	C. Longline, handline, rod and reel, bandit gear.
D. Recreational fishery	D. Bandit gear, rod and reel, handline, spear.
9. Spiny Dogfish Fishery (FMP jointly managed by NEFMC and SAFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear, bandit gear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
10. Smooth Dogfish Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear, bandit gear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
11. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line	D. Hook and line fishery.
E. Recreational fishery	E. Hook and line, snagging, cast nets.
12. Atlantic Mackerel, Squid, and Butterfish Trawl Fishery (Non-FMP).	Trawl.
13. Bait Fisheries (Non-FMP)	Purse seine.
14. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line, spear.
15. Whelk Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Pot and trap fishery	B. Pot, trap.
C. Dredge fishery	C. Dredge.
D. Recreational fishery	D. Hand harvest.
16. Marine Life Aquarium Fishery (Non-FMP).	Dip net, slurp gun, barrier net, drop net, allowable chemical, trap, pot, trawl.
17. Calico Scallop Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Recreational fishery	C. Hand harvest.
18. Summer Flounder Fishery (FMP managed by MAFMC):	
A. Commercial fishery	A. Trawl, longline, handline, rod and reel, pot, trap, gillnet, dredge.
B. Recreational fishery	B. Rod and reel, handline, pot, trap, spear.
19. Bluefish, Croaker, and Flounder Trawl and Gillnet Fishery (Bluefish FMP managed by MAFMC).	Trawl, gillnet.

Fishery	Authorized gear types
20. Commercial Fishery (Non-FMP)	Trawl, gillnet, longline, handline, hook and line, rod and reel, bandit gear, cast net, pot, trap, lampara net, spear.
21. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net.
22. Sargassum Fishery (Non-FMP)	Trawl.
23. Octopus Fishery (Non-FMP)	Trap, pot.
IV. Gulf of Mexico Fishery Management Council	
1. Gulf of Mexico Red Drum Fishery (FMP).	No harvest or possession in the EEZ.
2. Coral Reef Fishery (FMP):	
A. Commercial fishery	A. Hand harvest.
B. Recreational fishery	B. Hand harvest.
3. Gulf of Mexico Reef Fish Fishery (FMP):	
A. Snapper-Grouper reef fish longline and hook and line fishery.	A. Longline, handline, bandit gear, rod and reel, buoy gear.
B. Pot and trap reef fish fishery	B. Pot, trap.
C. Other commercial fishery	C. Spear, powerhead, cast net, trawl.
D. Recreational fishery	D. Spear, powerhead, bandit gear, handline, rod reel, cast net.
4. Gulf of Mexico Shrimp Fishery (FMP):	
A. Gulf of Mexico commercial fishery.	A. Trawl butterfly net, skimmer, cast net.
B. Recreational fishery	B. Trawl.
5. Gulf of Mexico Coastal Migratory Pelagics Fishery (FMP):	
A. Large pelagics longline fishery	A. Longline.
B. King/Spanish mackerel gillnet fishery.	B. Gillnet.
C. Pelagic hook and line fishery	C. Bandit gear, handline, rod and reel.
D. Pelagic species purse seine fishery.	D. Purse seine.
E. Recreational fishery	E. Bandit gear, handline, rod and reel, spear.
Gulf of Mexico Spiny Lobster Fishery (FMP):	
A. Commercial fishery	A. Trap, pot, dip net, bully net, hoop net, trawl, snare, hand harvest.
C. Recreational fishery	C. Dip net, bully net, pot, trap, snare, hand harvest.
6. Stone Crab Fishery (FMP):	
A. Trap and pot fishery	A. Trap, pot
B. Recreational fishery	B. Trap, pot, hand harvest.
7. Blue Crab Fishery (Non-FMP)	Trap, pot.
8. Golden Crab Fishery (Non-FMP)	Trap.
9. Mullet Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Pair trawl fishery	C. Pair trawl.
D. Cast net fishery	D. Cast net.
E. Recreational fishery	E. Bandit gear, handline, rod and reel, spear, cast net.
10. Inshore Coastal Gillnet Fishery (Non-FMP).	Gillnet.
11. Octopus Fishery (Non-FMP)	Trap, pot.
12. Marine Life Aquarium Fishery (Non-FMP).	Dip net, slurp gun, barrier net, drop net, allowable chemical, trap, pot, trawl.
13. Coastal Herring Trawl Fishery (Non-FMP).	Trawl.
14. Butterfish Trawl Fishery (Non-FMP)	Trawl.
15. Gulf of Mexico Groundfish (Non-FMP):	
A. Commercial fishery	A. Trawl, purse seine, gillnet.
B. Recreational fishery	B. Hook and line, rod and reel, spear.
16. Gulf of Mexico Menhaden Purse Seine Fishery (Non-FMP).	Purse seine.
17. Sardine Purse Seine Fishery (Non-FMP).	Purse seine.
18. Oyster Fishery (Non-FMP)	Dredge, tongs.
19. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, lampara net, spear.
20. Recreational Fishery (Non-FMP)	Bandit gear, handline, rod and reel, spear, bully net, gillnet, dip net, longline, powerhead, seine, slurp gun, trap, trawl, harpoon, cast net, hoop net, hook and line, hand harvest.
V. Caribbean Fishery Management Council	
1. Caribbean Spiny Lobster Fishery (FMP):	
A. Trap/pot fishery	A. Trap/pot.
B. Dip net fishery	B. Dip net.
C. Entangling net fishery	C. Gillnet, trammel net.
D. Hand harvest fishery	D. Hand harvest, snare.
E. Recreational fishery	E. Dip net, trap, pot, gillnet, trammel net.
2. Caribbean Shallow Water Reef Fish Fishery (FMP):	

Fishery	Authorized gear types
A. Longline/hook and line fishery	A. Longline, hook and line.
B. Trap/pot fishery	B. Trap, pot.
C. Entangling net fishery	C. Gillnet, trammel net.
D. Recreational fishery	D. Dip net, handline, rod and reel, slurp gun, spear.
3. Coral and Reef Resources Fishery (FMP):	
A. Commercial fishery	A. Dip net, slurp gun.
B. Recreational fishery	B. Dip net, slurp gun, hand harvest.
4. Queen Conch Fishery (FMP):	
A. Commercial fishery	A. Hand harvest.
B. Recreational fishery	B. Hand harvest.
5. Caribbean Pelagics Fishery (Non-FMP):	
A. Pelagics drift gillnet fishery	A. Gillnet.
B. Pelagics longline/hook and line fishery.	B. Longline/hook and line.
C. Recreational fishery	C. Spear, handline, longline, rod and reel.
6. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
7. Recreational Fishery (Non-FMP)	Rod and reel, hook and line, spear, powerhead, handline, hand harvest, cast net.
VI. Pacific Fishery Management Council	
1. Washington, Oregon, and California Salmon Fisheries (FMP):	
A. Salmon set gillnet fishery	A. Gillnet.
B. Salmon hook and line fishery	B. Hook and line.
C. Trawl fishery	C. Trawl.
D. Recreational fishery	D. Rod and reel.
2. West Coast Groundfish Fisheries (FMP):	
A. Pacific groundfish trawl fishery	A. Trawl.
B. Set gillnet fishery	B. Gillnet.
C. Groundfish longline and setline fishery.	C. Longline.
D. Groundfish handline and hook and line fishery.	D. Handline, hook and line.
E. Groundfish pot and trap fishery	E. Pot, trap.
F. Recreational fishery	F. Rod and reel, handline, spear, hook and line.
3. Northern Anchovy Fishery (FMP)	Purse seine, lampara net.
4. Angel Shark, White Croaker, California Halibut, White Sea Bass, Pacific Mackerel Large-Mesh Set Net Fishery (Non-FMP).	Gillnet.
5. Thresher Shark and Swordfish Drift Gillnet Fishery (Non-FMP).	Gillnet.
6. Pacific Shrimp and Prawn Fishery (Non-FMP):	
A. Pot and trap fishery	A. Pot, trap.
B. Trawl fishery	B. Trawl.
7. Lobster and Rock Crab Pot and Trap Fishery (Non-FMP).	Pot, trap.
8. Pacific Halibut Fishery (Non-FMP):	
A. Longline and setline fishery	A. Longline.
B. Hook-and-line fishery	B. Hook and line.
9. California Halibut Trawl and Trammel Net Fishery.	Trawl, trammel net.
10. Shark and Bonito Longline and Setline Fishery (Non-FMP).	Longline.
11. Dungeness Crab Pot and Trap Fishery (Non-FMP).	Pot, trap.
12. Hagfish Pot and Trap Fishery (Non-FMP).	Pot, trap.
13. Pacific Albacore and Other Tuna Hook-and-line Fishery (Non-FMP).	Hook and line.
14. Pacific Swordfish Harpoon Fishery (Non-FMP).	Harpoon.
15. Pacific Scallop Dredge Fishery (Non-FMP).	Dredge.
16. Pacific Yellowfin, Skipjack Tuna, Purse Seine Fishery, (Non-FMP).	Purse seine.
17. Market Squid Fishery (Non-FMP)	Purse seine, dip net.
18. Pacific Sardine, Pacific Mackerel, Pacific Saury, Pacific Bonito, and Jack Mackerel Purse Seine Fishery (Non-FMP).	Purse seine.
19. Finfish and Shellfish Live Trap, Hook-and-line, and Handline Fishery (Non-FMP).	Trap, handline, hook and line.
20. Recreational Fishery (Non-FMP)	Spear, trap, handline, pot, hook and line, rod and reel, hand harvest.
21. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
VII. North Pacific Fishery Management Council	
1. Alaska Scallop Fishery (FMP)	Dredge.
2. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Pot fishery	Pot.
3. BS and AI King and Tanner Crab Fishery (Non-FMP):	
Recreational fishery	Pot.
4. BS and AI Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line, and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. BS and AI pot and trap fishery	D. Pot, trap.
5. BS and AI Groundfish Recreational Fishery (Non-FMP).	Handline, rod and reel, hook and line, pot, trap.
6. Gulf of Alaska (GOA) Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. GOA pot and trap fishery	D. Pot, trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
7. Pacific Halibut Fishery (Non-FMP):	
Hook-and-line, Jig, and Troll Fishery.	Hook and line.

Fishery	Authorized gear types
8. Alaska High Seas Salmon Hook and Line Fishery (FMP).	Hook and line.
9. Alaska Salmon Fishery (Non-FMP):	
A. Hook-and-line fishery	A. Hook and line.
B. Gillnet fishery	B. Gillnet.
C. Purse seine fishery	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.
10. Finfish Purse Seine Fishery (Non-FMP).	Purse seine.
11. Octopus/Squid Longline Fishery (Non-FMP).	Longline.
12. Finfish Handline and Hook-and-line Fishery (Non-FMP).	Handline, hook and line.
13. Recreational Fishery (Non-FMP)	Handline, rod and reel, hook line.
14. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
VIII. Western Pacific Fishery Management Council	
1. Western Pacific Crustacean Fishery (FMP)	Trap, hand harvest, hoop net.
2. Western Pacific Crustacean Fishery (Non-FMP):	
A. Commercial fishery	A. Gillnet, hand harvest, hoop net, spear, snare, trap, trawl.
B. Recreational fishery	B. Gillnet, hand harvest, hoop net, spear, snare, trap.
C. Charter fishery	C. Hand harvest, spear.
3. Western Pacific Precious Corals Fishery (FMP):	
A. Tangle net dredge fishery	A. Tangle net dredge.
B. Submersible fishery	B. Submersible.
C. Dive fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
4. Western Pacific Precious Corals Fishery (Non-FMP).	Hand harvest, submersible, tangle net dredge.
5. Western Pacific Bottomfish and Seamount Groundfish Fishery (FMP):	
A. Bottomfish hook-and-line fishery	A. Bandit gear, buoy gear, handline, hook and line, rod and reel, hand harvest.
B. Seamount groundfish fishery	B. Longline, trawl.
C. Bottom longline fishery	C. Longline, hook and line.
D. Trap fishery	D. Trap.
E. Spear fishery	E. Spear, powerhead.
6. Western Pacific Bottomfish and Seamount Groundfish Fishery (Non-FMP):	
A. Commercial fishery	A. Bandit gear, buoy gear, gillnet, handline, hook-and-line, longline, rod and reel, spear, trap.
B. Recreational fishery	B. Bandit gear, buoy gear, Gillnet, handline, hook and line, longline, rod and reel, spear, trap, slurp gun, hand harvest.
C. Charter fishery	C. Bandit gear, buoy gear, handline, hook-and-line, rod and reel, spear.
7. Western Pacific Pelagics Fishery (FMP):	
A. Longline Fisher	A. Longline.
B. Hook and line fishery	B. Bandit gear, buoy gear, handline, hook and line, rod and reel.
C. Purse seine fishery	C. Lampara net, purse seine.
D. Spear fishery	D. Spear, powerhead.
8. Western Pacific Pelagics Fishery (Non-FMP):	
A. Recreational fishery	A. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and real, spear.
B. Commercial fishery	B. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
C. Charter fishery	C. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
9. Western Pacific Coastal Pelagics Fishery (Non-FMP).	Bandit gear, buoy gear, dip net, gillnet, handline, hook and line, hoop net, lampara net, purse seine, rod and reel, spear.
10. Western Pacific Squid and Octopus Fishery (Non-FMP).	Bandit gear, hand harvest, hook and line, rod and reel, spear, trap.
11. Western Pacific Coral Reef Fishery (Non-FMP).	Allowable chemical, barrier net, dip net, gillnet, hand harvest, seine, slurp gun, trap, spear, rod and reel, hook and line.
12. Recreational Fishery (Non-FMP)	Rod and reel, hook and line, handline, hand harvest, spear.

Fishery	Authorized gear types
13. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
IX. Secretary of Commerce	
1. Atlantic Tunas, Swordfish, and Sharks Fisheries (FMP):	
A. Swordfish handgear fishery	A. Rod and reel, harpoon, handline, bandit gear.
B. Pelagic longline fishery	B. Longline.
C. Shark drift gillnet fishery	C. Gillnet.
D. Shark bottom longline fishery	D. Longline.
E. Shark handgear fishery	E. Rod and reel, handline, bandit gear.
F. Tuna purse seine fishery	F. Purse seine.
G. Tuna recreational fishery	G. Rod and reel, handline.
H. Tuna handgear fishery	H. Rod and reel, harpoon, handline, bandit gear.
I. Tuna harpoon fishery	I. Harpoon.
2. Atlantic Billfish Fishery (FMP):	
Recreational fishery	Rod and reel.
3. Commercial Fisheries (Non-FMP) ...	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 63 FR 27217; May 18, 1998; 64 FR 4037, Jan. 27, 1999; 64 FR 29134, May 28, 1999; 64 FR 67516, Dec. 2, 1999]

§ 600.730 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to parts 622 through 699 of this chapter must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson-Stevens Act or any other statute administered by NOAA and this chapter.

(b) *Communications.* (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF–FM radiotelephone is the preferred method for communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal ''L'' as the signal to stop. In the International Code of Signals, ''L'' (.–..) means ''you should stop your vessel instantly.'' (Period (.) means a short flash of light; dash (–) means a long flash of light.)

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes prima facie evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF–FM, if so equipped.

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his/her party to come aboard.

(3) Except for those vessels with a freeboard of 4 ft (1.2 m) or less, provide a safe ladder, if needed, for the authorized officer and his/her party to come aboard.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope or safety line, and illumination for the ladder.

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light

by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal ''L'' and the necessity for the vessel to stop instantly. (Period (.) means a short flash of light; dash (-) means a long flash of light.)

(1) ''AA'' repeated (.-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) ''RY–CY'' (.-. -.— -.-. -.—) means ''you should proceed at slow speed, a boat is coming to you.'' This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) ''SQ3'' (... —.- ...—) means ''you should stop or heave to; I am going to board you.''

[61 FR 32540, June 24, 1996, as amended at 61 FR 37225, July 17, 1996; 63 FR 7075, Feb. 12, 1998]

§ 600.735 Penalties.

Any person committing, or fishing vessel used in the commission of a violation of the Magnuson-Stevens Act or any other statute administered by NOAA and/or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson-Stevens Act, to this section, to 15 CFR part 904 (Civil Procedures), and to other applicable law.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.740 Enforcement policy.

(a) The Magnuson-Stevens Act provides four basic enforcement remedies for violations, in ascending order of severity, as follows:

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR part 904, subpart E).

(2) Assessment by the Administrator of a civil money penalty.

(3) For certain violations, judicial forfeiture action against the vessel and its catch.

(4) Criminal prosecution of the owner or operator for some offenses. It shall be the policy of NMFS to enforce vigorously and equitably the provisions of the Magnuson-Stevens Act by utilizing that form or combination of authorized remedies best suited in a particular case to this end.

(b) Processing a case under one remedial form usually means that other remedies are inappropriate in that case. However, further investigation or later review may indicate the case to be either more or less serious than initially considered, or may otherwise reveal that the penalty first pursued is inadequate to serve the purposes of the Magnuson-Stevens Act. Under such circumstances, the Agency may pursue other remedies either in lieu of or in addition to the action originally taken. Forfeiture of the illegal catch does not fall within this general rule and is considered in most cases as only the initial step in remedying a violation by removing the ill-gotten gains of the offense.

(c) If a fishing vessel for which a permit has been issued under the Magnuson-Stevens Act is used in the commission of an offense prohibited by section 307 of the Magnuson-Stevens Act, NOAA may impose permit sanctions, whether or not civil or criminal action has been undertaken against the vessel or its owner or operator. In some cases, the Magnuson-Stevens Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Magnuson-Stevens Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity*. Nothing in this section is intended to inhibit or

prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Administrator, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Administrator, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing.*—(1) *General.* A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Administrator or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.

(iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:

(A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated

impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Administrator or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the FEDERAL REGISTER with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Administrator or Director also will forward copies of the application to the Council(s), the USCG, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Administrator or Regional Administrator shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Administrator or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the FEDERAL REGISTER describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Administrator or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures at set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

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

(6) *Transfer.* EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Administrator or Director, as specified in the EFP.

(d) *Exempted educational activities*—(1) *General.* A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Administrator or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate

Regional Administrator or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Administrator or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Administrator or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

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

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the

applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of fishing, despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.746 Observers.

(a) *Applicability*. This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq*.), the ATCA (16 U.S.C. 971 *et seq*.), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq*.), or any other U.S. law.

(b) *Observer requirement*. An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate as described in paragraph (c) of this section.

(c) *Inadequate or unsafe vessels*. (1) A vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 648, 660, 678, and 679) or if it has not passed a USCG safety examination or inspection. A vessel that has passed a USCG safety examination or inspection must display one of the following:

(i) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I and 46 CFR, chapter I;

(ii) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(iii) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(2) Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner/operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(3) *Pre-trip safety check*. Prior to each observed trip, the observer is encouraged to briefly walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. In addition, the observer is encouraged to spot check the following major items for compliance with applicable USCG regulations:

(i) Personal flotation devices/immersion suits;

(ii) Ring buoys;

(iii) Distress signals;

(iv) Fire extinguishing equipment;

(v) Emergency position indicating radio beacon (EPIRB), when required; and

(vi) Survival craft, when required.

(d) *Corrective measures*. If a vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions, NMFS may require the vessel owner or operator either to:

(1) Submit to and pass a USCG safety examination or inspection; or

(2) Correct the deficiency that is rendering the vessel inadequate or unsafe (e.g., if the vessel is missing one personal flotation device, the owner or operator could be required to obtain an additional one), before the vessel is boarded by the observer.

(e) *Timing*. The requirements of this section apply both at the time of the observer's boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel.

(f) *Effect of inadequate or unsafe status*. A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

[63 FR 27217, May 18, 1998]

§ 600.747 Guidelines and procedures for determining new fisheries and gear.

(a) *General.* Section 305(a) of the Magnuson-Stevens Act requires the Secretary to prepare a list of all fisheries under the authority of each Council, or the Director in the case of Atlantic highly migratory species, and all gear used in such fisheries. This section contains guidelines in paragraph (b) for determining when fishing gear or a fishery is sufficiently different from those listed in § 600.725(v) as to require notification of a Council or the Director in order to use the gear or participate in the unlisted fishery. This section also contains procedures in paragraph (c) for notification of a Council or the Director of potentially new fisheries or gear, and for amending the list of fisheries and gear.

(b) *Guidelines.* The following guidance establishes the basis for determining when fishing gear or a fishery is sufficiently different from those listed to require notification of the appropriate Council or the Director.

(1) The initial step in the determination of whether a fishing gear or fishery is sufficiently different to require notification is to compare the gear or fishery in question to the list of authorized fisheries and gear in § 600.725(v) and to the existing gear definitions in § 600.10.

(2) If the gear in question falls within the bounds of a definition in § 600.10 for an allowable gear type within that fishery, as listed under § 600.725(v), then the gear is not considered different, is considered allowable gear, and does not require notification of the Council or Secretary 90 days before it can be used in that fishery.

(3) If, for any reason, the gear is not consistent with a gear definition for a listed fishery as described in paragraph (b)(2) of this section, the gear is considered different and requires Council or Secretarial notification as described in paragraph (c) of this section 90 days before it can be used in that fishery.

(4) If a fishery falls within the bounds of the list of authorized fisheries and gear in § 600.725(v) under the Council's or Secretary's authority, then the fishery is not considered different, is considered an allowable fishery and does not require notification of the Council or Director before that fishery can occur.

(5) If a fishery is not already listed in the list of authorized fisheries and gear in § 600.725(v), then the fishery is considered different and requires notification as described in paragraph (c) of this section 90 days before it can occur.

(c) *Procedures.* If a gear or fishery does not appear on the list in § 600.725(v), or if the gear is different from that defined in § 600.10, the process for notification, and consideration by a Council or the Director, is as follows:

(1) *Notification.* After July 26, 1999, no person or vessel may employ fishing gear or engage in a fishery not included on the list of approved gear types in § 600.725(v) without notifying the appropriate Council or the Director at least 90 days before the intended use of that gear.

(2) *Notification procedures.* (i) A signed return receipt for the notice serves as adequate evidence of the date that the notification was received by the appropriate Council or the Director, in the case of Atlantic highly migratory species, and establishes the beginning of the 90-day notification period, unless required information in the notification is incomplete.

(ii) The notification must include:

(A) Name, address, and telephone number of the person submitting the notification.

(B) Description of the gear.

(C) The fishery or fisheries in which the gear is or will be used.

(D) A diagram and/or photograph of the gear, as well as any specifications and dimensions necessary to define the gear.

(E) The season(s) in which the gear will be fished.

(F) The area(s) in which the gear will be fished.

(G) The anticipated bycatch species associated with the gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the ESA.

(H) How the gear will be deployed and fished, including the portions of the marine environment where the gear

will be deployed (surface, midwater, and bottom).

(iii) Failure to submit complete and accurate information will result in a delay in beginning the 90-day notification period. The 90-day notification period will not begin until the information received is determined to be accurate and complete.

(3) *Action upon receipt of notification.* (i) *Species other than Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear, a Council must immediately begin consideration of the notification and send a copy of the notification to the appropriate Regional Administrator.

(B) If the Council finds that the use of an unlisted gear or participation in a new fishery would not compromise the effectiveness of conservation and management efforts, it shall:

(*1*) Recommend to the RA that the list be amended;

(*2*) Provide rationale and supporting analysis, as necessary, for proper consideration of the proposed amendment; and

(*3*) Provide a draft proposed rule for notifying the public of the proposed addition, with a request for comment.

(C) If the Council finds that the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend to the RA that the authorized list of fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation of a disapproval, and may request NMFS to publish emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate.

(D) After considering information in the notification and Council's recommendation, NMFS will decide whether to publish a proposed rule. If information on the new gear or fishery being considered indicates it is likely that it will compromise conservation and management efforts under the Magnuson-Stevens Act, and no additional new information is likely to be gained from a public comment period, then a proposed rule will not be published and NMFS will notify the appropriate Council. In such an instance, NMFS will publish emergency or interim regulations to prohibit or restrict use of the gear or participation in the fishery. If NMFS determines that the proposed amendment is not likely to compromise conservation and management efforts under the Magnuson-Stevens Act, NMFS will publish a proposed rule in the FEDERAL REGISTER with a request for public comment.

(ii) *Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear for Atlantic highly migratory species (HMS), NMFS will immediately begin consideration of the notification.

(B) Based on information in the notification and submitted by the Council, NMFS will make a determination whether the use of an unlisted gear or participation in an unlisted HMS fishery will compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act. If it is determined that the proposed amendment will not compromise conservation and management efforts, NMFS will publish a proposed rule.

(C) If NMFS finds that the proposed gear or fishery will be detrimental to conservation and management efforts in this initial stage of review, it will not publish a proposed rule and notify the applicant of the negative determination with the reasons therefor.

(4) *Final determination and publication of a final rule.* Following public comment, NMFS will approve or disapprove the amendment to the list of gear and fisheries.

(i) If approved, NMFS will publish a final rule in the FEDERAL REGISTER and notify the applicant and the Council, if appropriate, of the final approval.

(ii) If disapproved, NMFS will withdraw the proposed rule, notify the applicant and the Council, if appropriate, of the disapproval; publish emergency or interim regulations, if necessary, to prohibit or restrict the use of gear or the participation in a fishery; and either notify the Council of the need to amend an FMP or prepare an amendment to an FMP in the case of Atlantic highly migratory species.

[64 FR 4043, Jan. 27, 1999]

Subpart I—Fishery Negotiation Panels

SOURCE: 62 FR 23669, May 1, 1997, unless otherwise noted.

§ 600.750 Definitions.

Consensus means unanimous concurrence among the members on a Fishery Negotiation Panel established under this rule, unless such Panel:

(1) Agrees to define such term to mean a general but not unanimous concurrence; or

(2) agrees upon another specified definition.

Fishery negotiation panel (FNP) means an advisory committee established by one or more Councils or the Secretary in accordance with these regulations to assist in the development of fishery conservation and management measures.

Interest means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

Report means a document submitted by an FNP in accordance with the Magnuson-Stevens Act.

[62 FR 23669, May 1, 1997, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.751 Determination of need for a fishery negotiation panel.

A Council or NMFS may establish an FNP to assist in the development of specific fishery conservation and management measures. In determining whether to establish an FNP, NMFS or the Council, as appropriate, shall consider whether:

(a) There is a need for specific fishery conservation and management measures.

(b) There are a limited number of identifiable interests that will be significantly affected by the conservation and management measure.

(c) There is a reasonable likelihood that an FNP can be convened with a balanced representation of persons who:

(1) Can adequately represent the interests identified under paragraph (b) of this section.

(2) Are willing to negotiate in good faith to reach a consensus on a report regarding the issues presented.

(d) There is a reasonable likelihood that an FNP will reach

a consensus on a report regarding the issues presented within 1 year from date of establishment of the FNP.

(e) The use of an FNP will not unreasonably delay Council or NMFS fishery management plan development or rulemaking procedures.

(f) The costs of establishment and operation of an FNP are reasonable when compared to fishery management plan development or rulemaking procedures that do not use FNP procedures.

(g) The Council or NMFS has adequate resources and is willing to commit such resources, including technical assistance, to an FNP.

(h) The use of an FNP is in the public interest.

§ 600.752 Use of conveners and facilitators.

(a) *Purposes of conveners.* A Council or NMFS may use the services of a trained convener to assist the Council or NMFS in: (1) Conducting discussions to identify the issues of concern, and to ascertain whether the establishment of an FNP regarding such matter is feasible and appropriate.

(2) Identifying persons who will be significantly affected by the issues presented in paragraph (a)(1) of this section.

(b) *Duties of conveners.* The convener shall report findings under paragraph (a)(2) of this section and shall make recommendations to the Council or NMFS. Upon request of the Council or NMFS, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the potential conservation and management measures relevant to the issues to be negotiated. The report and any recommendations of the convener shall be made available to the public upon request.

(c) *Selection of facilitator.* Notwithstanding section 10(e) of the Federal Advisory Committee Act (FACA), a Council or NMFS may nominate a person trained in facilitation either from

the Federal Government or from outside the Federal Government to serve as an impartial, neutral facilitator for the negotiations of the FNP, subject to the approval of the FNP, by consensus. The facilitator may be the same person as the convener used under paragraph (a) of this section. If the FNP does not approve the nominee of the Council or NMFS for facilitator, the FNP shall submit a substitute nomination. If an FNP does not approve any nominee of the Council or NMFS for facilitator, the FNP shall select, by consensus, a person to serve as facilitator. A person designated to represent the Council or NMFS in substantive issues may not serve as facilitator or otherwise chair the FNP.

(d) *Roles and duties of facilitator.* A facilitator shall:

(1) Chair the meetings of the FNP in an impartial manner.

(2) Impartially assist the members of the FNP in conducting discussions and negotiations.

(3) Manage the keeping of minutes and records as required under section 10(b) and (c) of FACA.

§ 600.753 Notice of intent to establish a fishery negotiation panel.

(a) *Publication of notice.* If, after considering the report of a convener or conducting its own assessment, a Council or NMFS decides to establish an FNP, NMFS shall publish in the FEDERAL REGISTER and, as appropriate, in trade or other specialized publications, a document that shall include:

(1) An announcement that the Council or NMFS intends to establish an FNP to negotiate and develop a report concerning specific conservation and management measures.

(2) A description of the subject and scope of the conservation and management measure, and the issues to be considered.

(3) A list of the interests that are likely to be significantly affected by the conservation and management measure.

(4) A list of the persons proposed to represent such interests and the person or persons proposed to represent the Council or NMFS.

(5) A proposed agenda and schedule for completing the work of the FNP.

(6) A description of administrative support for the FNP to be provided by the Council or NMFS, including technical assistance.

(7) A solicitation for comments on the proposal to establish the FNP, and the proposed membership of the FNP.

(8) An explanation of how a person may apply or nominate another person for membership on the FNP, as provided under paragraph (b) of this section.

(b) *Nomination of members and public comment.* Persons who may be significantly affected by the development of conservation and management measure and who believe that their interests will not be adequately represented by any person specified in a document under paragraph (a)(4) of this section may apply for, or nominate another person for, membership on the FNP to represent such interests. Each application or nomination shall include:

(1) The name of the applicant or nominee and a description of the interests such person shall represent.

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent.

(3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the conservation and management measure under consideration.

(4) The reasons that the persons specified in the document under paragraph (a)(4) of this section do not adequately represent the interests of the person submitting the application or nomination.

(c) *Public comment.* The Council or NMFS shall provide at least 30 calendar days for the submission of comments and applications under this section.

§ 600.754 Decision to establish a fishery negotiation panel.

(a) *Determination to establish an FNP.* If, after considering comments and applications submitted under § 600.753, the Council or NMFS determines that an FNP can adequately represent the interests that will be significantly affected and that it is feasible and appropriate in the particular case, the Council or NMFS may establish an FNP.

(b) *Determination not to establish FNP.* If, after considering such comments and applications, the Council or NMFS decides not to establish an FNP, the Council or NMFS shall promptly publish notification of such decision and the reasons therefor in the FEDERAL REGISTER and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the FNP to represent such interests with respect to the issues of concern.

§ 600.755 Establishment of a fishery negotiation panel.

(a) *General authority.* (1) A Council may establish an FNP to assist in the development of specific conservation and management measures for a fishery under its authority.

(2) NMFS may establish an FNP to assist in the development of specific conservation and management measures required for:

(i) A fishery for which the Secretary has authority under section 304(e)(5) of the Magnuson-Stevens Act, regarding rebuilding of overfished fisheries;

(ii) A fishery for which the Secretary has authority under 16 U.S.C. section 304(g), regarding highly migratory species; or

(iii) Any fishery with the approval of the appropriate Council.

(b) *Federal Advisory Committee Act (FACA)* In establishing and administering such an FNP, the Council or NMFS shall comply with the FACA with respect to such FNP.

(c) *Balance.* Each potentially affected organization or individual does not necessarily have to have its own representative, but each interest must be adequately represented. The intent is to have a group that as a whole reflects a proper balance and mix of interests. Representatives must agree, in writing, to negotiate in good faith.

(d) *Membership.* The Council or NMFS shall limit membership on an FNP to no more than 25 members, unless the Council or NMFS determines that a greater number of members is necessary for the functioning of the FNP or to achieve balanced membership. Each FNP shall include at least one person representing the Council in addition to at least one person representing NMFS.

§ 600.756 Conduct and operation of a fishery negotiation panel.

(a) *Roles and duties of an FNP.* Each FNP shall consider the issue proposed by the Council or NMFS for consideration and shall attempt to reach a consensus concerning a report to assist in the development of a conservation and management measure with respect to such matter and any other matter the FNP determines is relevant to the development of a conservation and management measure. An FNP may adopt procedures for the operation of the FNP.

(b) *Roles and duties of representative of the council or NMFS.* The person or persons representing the Council or NMFS on an FNP shall participate in the deliberations and activities of the FNP with the same rights and responsibilities as other members of the FNP, and shall be authorized to fully represent the Council or NMFS in the discussions and negotiations of the FNP.

§ 600.757 Operational protocols.

(a) *Services of conveners and facilitators.* A Council or NMFS may employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for an FNP established under § 600.755, or may use the services of a government employee to act as a convener or a facilitator for such an FNP.

(b) *Councils.* For an FNP proposed and established by one or more Councils approved expenses shall be paid out of the Council's operating budget.

(c) *Expenses of FNP members.* Members of an FNP shall be responsible for their own expenses of participation in such an FNP, except that NMFS or the Council may, in accordance with section 7(d) of FACA, pay for a member's reasonable travel and per diem expenses, and a reasonable rate of compensation, if:

(1) Such member certifies a lack of adequate financial resources to participate in the FNP.

(2) The Council or NMFS determines that such member's participation in

the FNP is necessary to assure an adequate representation of the member's interest.

(d) *Administrative support.* The Council or NMFS shall provide appropriate administrative support to an FNP including technical assistance.

§ 600.758 Preparation of report.

(a) At the conclusion of the negotiations, an FNP may submit a report. Such report shall specify:

(1) All the areas where consensus was reached by the FNP, including, if appropriate, proposed conservation and management measures.

(2) Any other information submitted by members of the FNP.

(b) Upon receipt of the report, the Council or NMFS shall publish such report in the FEDERAL REGISTER for public comment.

§ 600.759 Use of report.

A Council or NMFS may, at its discretion, use all or a part of a report prepared in accordance with § 600.758 in the development of conservation and management measures. Neither a Council nor NMFS, whichever is appropriate, is required to use such report.

§ 600.760 Fishery Negotiation Panel lifetime.

(a) An FNP shall terminate upon either:

(1) Submission of a report prepared in accordance with § 600.758; or

(2) Submission of a written statement from the FNP to the Council or NMFS that no consensus can be reached.

(b) In no event shall an FNP exist for longer than 1 year from the date of establishment unless granted an extension. Upon written request by the FNP to the Council or NMFS, and written authorization from the Council or NMFS (whichever is appropriate), the Secretary may authorize an extension for a period not to exceed 6 months. No more than one extension may be granted per FNP.

Subpart J—Essential Fish Habitat (EFH)

SOURCE: 62 FR 66551, Dec. 19, 1997, unless otherwise noted.

§ 600.805 Purpose and scope.

(a) *Purpose.* This subpart provides guidelines for Councils and the Secretary to use in adding the required provision on EFH to an FMP, i.e., description and identification of essential fish habitat (EFH), adverse impacts on EFH (including minimizing, to the extent practicable, adverse impacts from fishing), and actions to conserve and enhance EFH.

(b) *Scope*—(1) *Species covered.* An EFH provision in an FMP must include all fish species in the FMU. A Council may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.

(2) *Geographic.* EFH may be described and identified in waters of the United States, as defined in 33 CFR 328.3 and the exclusive economic zone, as defined in § 600.10. Councils may describe, identify, and protect habitats of managed species beyond the exclusive economic zone; however, such habitat may not be considered EFH for the purposes of section 303(a)(7) and 305(b) of the Magnuson-Stevens Act. Activities that may adversely impact such habitat can be addressed through any process conducted in accordance with international agreements between the United States and the foreign nation(s) undertaking or authorizing the action.

§ 600.810 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact which reduces quality and/or quantity of EFH. Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, or reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Council includes the Secretary, as applicable, when preparing Secretarial FMPs or amendments under sections 304(c) and (g) of the Magnuson-Stevens Act.

Ecosystem means communities of organisms interacting with one another

and with the chemical and physical factors making up their environment.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(9).

Healthy ecosystem means an ecosystem where ecological productive capacity is maintained, diversity of the flora and fauna is preserved, and the ecosystem retains the ability to regulate itself. Such an ecosystem should be similar to comparable, undisturbed, ecosystems with regard to standing crop, productivity, nutrient dynamics, trophic structure, species richness, stability, resilience, contamination levels, and the frequency of diseased organisms.

Overfished means any stock or stock complex, the status of which is reported as overfished by the Secretary pursuant to § 304(e)(1) of the Magnuson-Stevens Act.

(b) *Word usage.* The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'', are used in the same manner as in § 600.305(c).

§ 600.815 Contents of Fishery Management Plans.

(a) *Mandatory contents*—(1) *Habitat requirements by life history stage.* FMPs must describe EFH in text and with tables that provide information on the biological requirements for each life history stage of the species. These tables should summarize all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. Information in the tables should be supported with citations.

(2) *Description and identification of EFH*—(i) *Information requirements.* (A) An initial inventory of available environmental and fisheries data sources relevant to the managed species should be used in describing and identifying EFH. This inventory should also help to identify major species-specific habitat data gaps. Deficits in data availability (i.e., accessibility and application of the data) and in data quality (including considerations of scale and resolution; relevance; and potential biases in collection and interpretation) should be identified.

(B) To identify EFH, basic information is needed on current and historic stock size, the geographic range of the managed species, the habitat requirements by life history stage, and the distribution and characteristics of those habitats. Information is also required on the temporal and spatial distribution of each major life history stage (defined by developmental and functional shifts). Since EFH should be identified for each major life history stage, data should be collected on, but not limited to, the distribution, density, growth, mortality, and production of each stage within all habitats occupied, or formerly occupied, by the species. These data should be obtained from the best available information, including peer-reviewed literature, data reports and ''gray'' literature, data files of government resource agencies, and any other sources of quality information.

(C) The following approach should be used to gather and organize the data necessary for identifying EFH. Information from all levels should be used to identify EFH. The goal of this procedure is to include as many levels of analysis as possible within the constraints of the available data. Councils should strive to obtain data sufficient to describe habitat at the highest level of detail (i.e., Level 4).

(*1*) *Level 1: Presence/absence distribution data are available for some or all portions of the geographic range of the species.* At this level, only presence/absence data are available to describe the distribution of a species (or life history stage) in relation to potential habitats. Care should be taken to ensure that all potential habitats have been sampled adequately. In the event that distribution data are available for only portions of the geographic area occupied by a particular life history stage of a species, EFH can be inferred on the basis of distributions among habitats where the species has been found and on information about its habitat requirements and behavior.

(*2*) *Level 2: Habitat-related densities of the species are available.* At this level, quantitative data (i.e., density or relative abundance) are available for the habitats occupied by a species or life history stage. Because the efficiency of

sampling methods is often affected by habitat characteristics, strict quality assurance criteria should be used to ensure that density estimates are comparable among methods and habitats. Density data should reflect habitat utilization, and the degree that a habitat is utilized is assumed to be indicative of habitat value. When assessing habitat value on the basis of fish densities in this manner, temporal changes in habitat availability and utilization should be considered.

(*3*) *Level 3: Growth, reproduction, or survival rates within habitats are available.* At this level, data are available on habitat-related growth, reproduction, and/or survival by life history stage. The habitats contributing the most to productivity should be those that support the highest growth, reproduction, and survival of the species (or life history stage).

(*4*) *Level 4: Production rates by habitat are available.* At this level, data are available that directly relate the production rates of a species or life history stage to habitat type, quantity, quality, and location. Essential habitats are those necessary to maintain fish production consistent with a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(ii) *EFH determination.* (A) The information obtained through the analysis in paragraph (a)(2)(i) of this section will allow Councils to assess the relative value of habitats. Councils should interpret this information in a risk-averse fashion, to ensure adequate areas are protected as EFH of managed species. Level 1 information, if available, should be used to identify the geographic range of the species. Level 2 through 4 information, if available, should be used to identify the habitats valued most highly within the geographic range of the species. If only Level 1 information is available, presence/absence data should be evaluated (e.g., using a frequency of occurrence or other appropriate analysis) to identify those habitat areas most commonly used by the species. Areas so identified should be considered essential for the species. However, habitats of intermediate and low value may also be essential, depending on the health of the fish population and the ecosystem. Councils must demonstrate that the best scientific information available was used in the identification of EFH, consistent with national standard 2, but other data may also be used for the identification.

(B) If a species is overfished, and habitat loss or degradation may be contributing to the species being identified as overfished, all habitats currently used by the species should be considered essential in addition to certain historic habitats that are necessary to support rebuilding the fishery and for which restoration is technologically and economically feasible. Once the fishery is no longer considered overfished, the EFH identification should be reviewed, and the FMP amended, if appropriate.

(C) EFH will always be greater than or equal to aquatic areas that have been identified as ''critical habitat'' for any managed species listed as threatened or endangered under the Endangered Species Act.

(D) Where a stock of a species is considered to be healthy, then EFH for the species should be a subset of all existing habitat for the species.

(E) Ecological relationships among species and between the species and their habitat require, where possible, that an ecosystem approach be used in determining the EFH of a managed species or species assemblage. The extent of the EFH should be based on the judgment of the Secretary and the appropriate Council(s) regarding the quantity and quality of habitat that is necessary to maintain a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(F) If degraded or inaccessible aquatic habitat has contributed to the reduced yields of a species or assemblage, and in the judgment of the Secretary and the appropriate Council(s), the degraded conditions can be reversed through such actions as improved fish passage techniques (for fish blockages), improved water quality or quantity measures (removal of contaminants or increasing flows), and similar measures that are technologically and economically feasible, then EFH should include those habitats that would be essential

to the species to obtain increased yields.

(iii) *EFH Mapping Requirements.* The general distribution and geographic limits of EFH for each life history stage should be presented in FMPs in the form of maps. Ultimately, these data should be incorporated into a geographic information system (GIS) to facilitate analysis and presentation. These maps may be presented as fixed in time and space, but they should encompass all appropriate temporal and spatial variability in the distribution of EFH. If the geographic boundaries of EFH change seasonally, annually, or decadally, these changing distributions need to be represented in the maps. Different types of EFH should be identified on maps along with areas used by different life history stages of the species. The type of information used to identify EFH should be included in map legends, and more detailed and informative maps should be produced as more complete information about population responses (e.g., growth, survival, or reproductive rates) to habitat characteristics becomes available. Where the present distribution or stock size of a species or life history stage is different from the historical distribution or stock size, then maps of historical habitat boundaries should be included in the FMP, if known. The EFH maps are a means to visually present the EFH described in the FMP. If the maps identifying EFH and the information in the description of EFH differ, the description is ultimately determinative of the limits of EFH.

(3) *Fishing activities that may adversely affect EFH.* (i) Adverse effects from fishing may include physical, chemical, or biological alterations of the substrate, and loss of, or injury to, benthic organisms, prey species and their habitat, and other components of the ecosystem.

(ii) FMPs must include management measures that minimize adverse effects on EFH from fishing, to the extent practicable, and identify conservation and enhancement measures. The FMP must contain an assessment of the potential adverse effects of all fishing equipment types used in waters described as EFH. This assessment should consider the relative impacts of all fishing equipment types used in EFH on different types of habitat found within EFH. Special consideration should be given to equipment types that will affect habitat areas of particular concern. In completing this assessment, Councils should use the best scientific information available, as well as other appropriate information sources, as available. Included in this assessment should be consideration of the establishment of research closure areas and other measures to evaluate the impact of any fishing activity that physically alters EFH.

(iii) Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing practice is having an identifiable adverse effect on EFH, based on the assessment conducted pursuant to paragraph (a)(3)(ii) of this section and/or the cumulative impacts analysis conducted pursuant to paragraph (a)(6)(ii) of this section.

(iv) In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider whether, and to what extent, the fishing activity is adversely impacting EFH, including the fishery; the nature and extent of the adverse effect on EFH; and whether the management measures are practicable, taking into consideration the long and short-term costs as well as benefits to the fishery and its EFH, along with other appropriate factors, consistent with national standard 7.

(4) *Options for managing adverse effects from fishing.* Fishery management options may include, but are not limited to:

(i) *Fishing equipment restrictions.* These options may include, but are not limited to: Seasonal and area restrictions on the use of specified equipment; equipment modifications to allow escapement of particular species or particular life stages (e.g., juveniles); prohibitions on the use of explosives and chemicals; prohibitions on anchoring or setting equipment in sensitive areas; and prohibitions on fishing activities that cause significant physical damage in EFH.

(ii) *Time/area closures.* These actions may include, but are not limited to:

Closing areas to all fishing or specific equipment types during spawning, migration, foraging, and nursery activities; and designating zones for use as marine protected areas to limit adverse effects of fishing practices on certain vulnerable or rare areas/species/life history stages, such as those areas designated as habitat areas of particular concern.

(iii) *Harvest limits.* These actions may include, but are not limited to, limits on the take of species that provide structural habitat for other species assemblages or communities, and limits on the take of prey species.

(5) *Identification of Non-fishing related activities that may adversely affect EFH.* FMPs must identify activities that have the potential to adversely affect EFH quantity or quality, or both. Broad categories of activities which can adversely affect EFH include, but are not limited to: Dredging, fill, excavation, mining, impoundment, discharge, water diversions, thermal additions, actions that contribute to nonpoint source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. An FMP should describe the EFH most likely to be adversely affected by these or other activities. For each activity, the FMP should describe known and potential adverse impacts to EFH. The descriptions should explain the mechanisms or processes that may cause the adverse effects and how these may affect habitat function. A GIS or other mapping system should be used to support analyses of data. Maps geographically depicting impacts identified in this paragraph should be included in an FMP.

(6) *Cumulative impacts analysis*—(i) *Analysis.* To the extent feasible and practicable, FMPs should analyze how fishing and non-fishing activities influence habitat function on an ecosystem or watershed scale. This analysis should describe the ecosystem or watershed, the dependence of the managed species on the ecosystem or watershed, especially EFH; and how fishing and non-fishing activities, individually or in combination, impact EFH and the managed species, and how the loss of EFH may affect the ecosystem. An assessment of the cumulative and synergistic effects of multiple threats, including the effects of natural stresses (such as storm damage or climate-based environmental shifts), and an assessment of the ecological risks resulting from the impact of those threats on the managed species' habitat should also be included. For the purposes of this analysis, cumulative impacts are impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of who undertakes such actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time.

(ii) *Cumulative impacts from fishing.* In addressing the impacts of fishing on EFH, Councils should also consider the cumulative impacts of multiple fishing practices and non-fishing activities on EFH, especially, on habitat areas of particular concern. Habitats that are particularly vulnerable to specific fishing equipment types should be identified for possible designation as habitat areas of particular concern.

(iii) *Mapping cumulative impacts.* A GIS or other mapping system should be used to support analyses of data. Maps depicting data documenting cumulative impacts identified in this paragraph should be included in an FMP.

(iv) *Research needs.* If completion of these analyses is not feasible or practicable for every ecosystem or watershed within an area identified as EFH, Councils should, in consultation with NMFS, identify in the FMP priority research areas to allow these analyses to be completed. Councils should include a schedule for completing such research. Such schedule of priority research areas should be combined with the research needs identified pursuant to paragraph (a)(10) of this section.

(7) *Conservation and enhancement*—(i) *Contents of FMPs.* FMPs must describe options to avoid, minimize, or compensate for the adverse effects identified pursuant to paragraphs (a) (5) and

(6) of this section and promote the conservation and enhancement of EFH, especially in habitat areas of particular concern.

(ii) *General conservation and enhancement recommendations.* Generally, non-water dependent actions should not be located in EFH if such actions may have adverse impacts on EFH. Activities that may result in significant adverse affects on EFH, should be avoided where less environmentally harmful alternatives are available. If there are no alternatives, the impacts of these actions should be minimized. Environmentally sound engineering and management practices should be employed for all actions which may adversely affect EFH. Disposal or spillage of any material (dredge material, sludge, industrial waste, or other potentially harmful materials) which would destroy or degrade EFH should be avoided. If avoidance or minimization is not possible, or will not adequately protect EFH, compensatory mitigation to conserve and enhance EFH should be recommended. FMPs may recommend proactive measures to conserve or enhance EFH. When developing proactive measures, Councils may develop a priority ranking of the recommendations to assist Federal and state agencies undertaking such measures.

(iii) *Conservation and enhancement options.* FMPs should provide a variety of options to conserve or enhance EFH, which may include, but are not limited to:

(A) *Enhancement of rivers, streams, and coastal areas.* EFH located in, or influenced by, rivers, streams, and coastal areas may be enhanced by reestablishing endemic trees or other appropriate native vegetation on adjacent riparian areas; restoring natural bottom characteristics; removing unsuitable material from areas affected by human activities; or adding gravel or substrate to stream areas to promote spawning. Adverse effects stemming from upland areas that influence EFH may be avoided or minimized by employing measures such as, but not limited to, erosion control, road stabilization, upgrading culverts, removal or modification of operating procedures of dikes or levees to allow for fish passage, structural and operation measures at dams for fish passage and habitat protection, or improvement of watershed management. Initiation of Federal, state, or local government planning processes to restore watersheds associated with such rivers, streams, or coastal areas may also be recommended.

(B) *Water quality and quantity.* This category of options may include use of best land management practices for ensuring compliance with water quality standards at state and Federal levels, improved treatment of sewage, proper disposal of waste materials, and providing appropriate in-stream flow.

(C) *Watershed analysis and planning.* This may include encouraging local and state efforts to minimize destruction/degradation of wetlands, restore and maintain the ecological health of watersheds, and encourage restoration of native species. Any analysis of options should consider natural variability in weather or climatic conditions.

(D) *Habitat creation.* Under appropriate conditions, habitat creation (converting non-EFH to EFH) may be considered as a means of replacing lost or degraded EFH. However, habitat conversion at the expense of other naturally functioning systems must be justified within an ecosystem context.

(8) *Prey species.* Loss of prey is an adverse effect on EFH and a managed species, because one component of EFH is that it be necessary for feeding. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species may be considered adverse effects on a managed species and its EFH. FMPs should identify the major prey species for the species in the FMU and generally describe the location of prey species' habitat. Actions that cause a reduction of the prey species population, including where there exists evidence that adverse effects to habitat of prey species is causing a decline in the availability of the prey species, should also be described and identified. Adverse effects on prey species and their habitats may result from fishing and non-fishing activities.

(9) *Identification of habitat areas of particular concern.* FMPs should identify habitat areas of particular concern within EFH. In determining whether a type, or area of EFH is a habitat area of particular concern, one or more of the following criteria must be met:

(i) The importance of the ecological function provided by the habitat.

(ii) The extent to which the habitat is sensitive to human-induced environmental degradation.

(iii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(iv) The rarity of the habitat type.

(10) *Research and information needs.* Each FMP should contain recommendations, preferably in priority order, for research efforts that the Councils and NMFS view as necessary for carrying out their EFH management mandate. The need for additional research is to make available sufficient information to support a higher level of description and identification of EFH under paragraph (a)(2)(i) of this section. Additional research may also be necessary to identify and evaluate actual and potential adverse effects on EFH, including, but not limited to, direct physical alteration; impaired habitat quality/functions; cumulative impacts from fishing; or indirect adverse effects such as sea level rise, global warming and climate shifts; and non-equipment related fishery impacts. The Magnuson-Stevens Act specifically identifies the effects of fishing as a concern. The need for additional research on the effects of fishing equipment on EFH and a schedule for obtaining that information should be included in this section of the FMP. If an adverse effect on EFH is identified and determined to be an impediment to maintaining a sustainable fishery and the managed species' contribution to a healthy ecosystem, then the research needed to quantify and mitigate that effect should be identified in this section.

(11) *Review and revision of EFH components of FMPs.* Councils and NMFS should periodically review the EFH components of FMPs, including an update of the equipment assessment originally conducted pursuant to paragraph (a)(3)(ii) of this section. Each EFH FMP amendment should include a provision requiring review and update of EFH information and preparation of a revised FMP amendment if new information becomes available. The schedule for this review should be based on an assessment of both the existing data and expectations when new data will become available. This information should be reviewed as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to § 600.315(e). A complete review of information should be conducted as recommended by the Secretary, but at least once every 5 years.

(b) *Optional components.* An FMP may include a description and identification of the habitat of species under the authority of the Council, even if not contained in the FMU. However, such habitat may not be EFH. This subpart does not change a Council's ability to implement management measures for a managed species for the protection of another species.

(c) *Development of EFH recommendations.* After reviewing the best available scientific information, as well as other appropriate information, and in consultation with the Councils, participants in the fishery, interstate commissions, Federal agencies, state agencies, and other interested parties, NMFS will develop written recommendations for the identification of EFH for each FMP. In recognition of the different approaches to FMP development taken by each Council, the NMFS EFH recommendations may constitute a review of a draft EFH document developed by a Council, or may include suggestions for a draft EFH FMP amendment and may precede the Council's development of such documents, as appropriate. In both cases, prior to submitting a written EFH identification recommendation to a Council for an FMP, the draft recommendation will be made available for public review and at least one public meeting will be held. NMFS will work with the affected Council(s) to conduct this review in association with scheduled public Council meetings whenever possible. The review may be conducted at a meeting of the Council committee responsible for habitat issues or as a part of a full Council

meeting. After receiving public comment, NMFS will revise its draft recommendations, as appropriate, and forward a final written recommendation and comments to the Council(s).

(d) *Relationship to other fishery management authorities.* Councils are encouraged to coordinate with state and interstate fishery management agencies where Federal fisheries affect state and interstate managed fisheries or where state or interstate fishery regulations affect the management of Federal fisheries. Where a state or interstate fishing activity adversely impacts EFH, NMFS will consider that action to be an adverse effect on EFH pursuant to paragraph (a)(5) of this section and will provide EFH conservation recommendations to the appropriate state or interstate fishery management agency on that activity.

Subpart K—EFH Coordination, Consultation, and Recommendations

SOURCE: 62 FR 66555, Dec. 19, 1997, unless otherwise noted.

§ 600.905 Purpose and scope and NMFS/Council cooperation.

(a) *Purpose.* These procedures address the coordination, consultation, and recommendation requirements of sections 305(b)(1)(D) and 305(b)(2–4) of the Magnuson-Stevens Act. The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.

(b) *Scope.* Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with, and provide information to, other Federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all Federal agencies to consult with the Secretary on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH. Sections 305(b) (3) and (4) direct the Secretary and the Councils to provide comments and EFH conservation recommendations to Federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. Section 305(b)(4)(B) requires Federal agencies to respond in writing to such comments. The following procedures for coordination, consultation, and recommendations allow all parties involved to understand and implement the requirements of the Magnuson-Stevens Act.

(c) *Cooperation between Councils and NMFS.* The Councils and NMFS should cooperate as closely as possible to identify actions that may adversely affect EFH, to develop comments and EFH conservation recommendations to Federal and state agencies, and to provide EFH information to Federal or state agencies. The Secretary will seek to develop agreements with each Council to facilitate sharing information on actions that may adversely affect EFH and in coordinating Council and NMFS comments and recommendations on those actions. However, NMFS and the Councils also have the authority to act independently.

§ 600.910 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact which reduces quality and/or quantity of EFH. Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitatwide impacts, including individual, cumulative, or synergistic consequences of actions.

Council includes the Secretary, as applicable, when preparing FMPs or amendments under section 304 (c) and (g) of the Magnuson-Stevens Act; and when commenting and making recommendations under the authority of section 305(b)(3) of the Magnuson-Stevens Act to any Federal or state agency on actions that may affect the habitat of fishery resources managed under such FMPs.

Federal action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(9).

State action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a state agency.

(b) *Word usage.* The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'', are used in the same manner as in § 600.305(c).

§ 600.915 Coordination for the conservation and enhancement of EFH.

To further the conservation and enhancement of EFH in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies, information on the locations of EFH, including maps and/or narrative descriptions. NMFS will also provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. Federal and state agencies empowered to authorize, fund, or undertake actions that may adversely affect EFH are encouraged to contact NMFS and the Councils to become familiar with areas designated as EFH, and potential threats to EFH, as well as opportunities to promote the conservation and enhancement of such habitat.

§ 600.920 Federal agency consultation with the Secretary.

(a) *Consultation generally*—(1) *Actions requiring consultation.* Pursuant to section 305(b)(2) of the Magnuson-Stevens Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. EFH consultation is not required for completed actions, e.g., issued permits. Consultation is required for renewals, reviews, or substantial revisions of actions. Consultation on Federal programs delegated to non-Federal entities is required at the time of delegation, review, and renewal of the delegation. EFH consultation is required for any Federal funding of actions that may adversely affect EFH. NMFS and Federal agencies responsible for funding actions that may adversely affect EFH should consult on a programmatic level, if appropriate, with respect to these actions.

(2) *Appropriate level of consultation.* (i) NMFS and other Federal agencies may conduct consultation at either a programmatic or project-specific level. Federal actions may be evaluated at a programmatic level if sufficient information is available to develop EFH conservation recommendations and address all reasonably foreseeable adverse effects to EFH. Project-specific consultations are more appropriate when critical decisions are made at the project implementation stage, or when sufficiently detailed information for the development of EFH conservation recommendations does not exist at the programmatic level.

(ii) If, after a Federal agency requests programmatic consultation, NMFS determines that all concerns about adverse effects on EFH can be addressed at a programmatic level, NMFS will develop EFH conservation recommendations that cover all projects implemented under that program, and no further EFH consultation will be required. Alternatively, NMFS may determine that project-specific consultation is needed for part or all of the program's activities, in which case NMFS may develop some EFH conservation recommendations at a programmatic level, but will also recommend that project-specific consultation will be needed to complete the EFH consultation requirements. NMFS may also determine that programmatic consultation is not appropriate, in which case all EFH conservation recommendations will be deferred to project-specific consultations.

(b) *Designation of lead agency.* If more than one Federal agency is responsible for a Federal action, the consultation requirements of sections 305(b)(2–4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency must notify NMFS in writing that it is representing one or more additional agencies.

(c) *Designation of non-Federal representative.* A Federal agency may designate a non-Federal representative to conduct an abbreviated consultation or prepare an EFH Assessment by giving written notice of such designation to

NMFS. If a non-Federal representative is used, the Federal action agency remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act.

(d) *Best available information.* The Federal action agency and NMFS must use the best scientific information available regarding the effects of the proposed action on EFH. Other appropriate sources of information may also be considered.

(e) *Use of existing consultation/environmental review procedures*—(1) *Criteria.* Consultation and commenting under sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as the National Environmental Policy Act (NEPA), Fish and Wildlife Coordination Act, Clean Water Act, Endangered Species Act (ESA), and Federal Power Act. The consultation requirements of section 305(b)(2) of the Magnuson-Stevens Act can be satisfied using existing or modified procedures required by other statutes if such processes meet the following criteria:

(i) The existing process must provide NMFS with timely notification of actions that may adversely affect EFH. The Federal action agency should notify NMFS according to the same timeframes for notification (or for public comment) as in the existing process. However, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter timeframes if they allow sufficient time for NMFS to develop EFH conservation recommendations.

(ii) Notification must include an assessment of the impacts of the proposed action on EFH that meets the requirements for EFH Assessments contained in paragraph (g) of this section. If the EFH Assessment is contained in another document, that section of the document must be clearly identified as the EFH Assessment.

(iii) NMFS must have made a finding pursuant to paragraph (e)(3) of this section that the existing process satisfies the requirements of section 305(b)(2) of the Magnuson-Stevens Act.

(2) *EFH conservation recommendation requirements.* If an existing consultation process is used to fulfill the EFH consultation requirements, then the comment deadline for that process should apply to the submittal of NMFS conservation recommendations under section 305(b)(4)(A) of the Magnuson-Stevens Act, unless a different deadline is agreed to by NMFS and the Federal agency. The Federal agency must respond to these recommendations within 30 days pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act. NMFS may request the further review of any Federal agency decision that is inconsistent with a NMFS EFH recommendation, in accordance with paragraph (j)(2) of this section. If NMFS EFH conservation recommendations are combined with other NMFS or NOAA comments on a Federal action, such as NOAA comments on a draft Environmental Impact Statement, the EFH conservation recommendations shall be clearly identified as such (e.g., a section in the comment letter entitled ''EFH conservation recommendations'') and a response pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act is required for only the identified portion of the comments.

(3) *NMFS finding.* A Federal agency with an existing consultation process should contact NMFS at the appropriate level (regional offices for regional processes, headquarters office for national processes) to discuss how the existing process, with or without modifications, can be used to satisfy the EFH consultation requirements. If, at the conclusion of these discussions, NMFS determines that the existing process meets the criteria of paragraph (e)(1) of this section, NMFS will make a finding that the existing or modified process can satisfy the EFH consultation requirements of the Magnuson-Stevens Act. If NMFS does not make such a finding, or if there are no existing consultation processes relevant to the Federal agency's actions, the action agency and NMFS should follow the consultation process in the following sections.

(f) *General Concurrence*—(1) *Purpose.* The General Concurrence process identifies specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in no more than minimal adverse effects individually and cumulatively. General Concurrences may be national or regional in scope.

(2) *Criteria.* (i) For Federal actions to qualify for General Concurrence, NMFS must determine, after consultation with the appropriate Council(s), that the actions meet all of the following criteria:

(A) The actions must be similar in nature and similar in their impact on EFH.

(B) The actions must not cause greater than minimal adverse effects on EFH when implemented individually.

(C) The actions must not cause greater than minimal cumulative adverse effects on EFH.

(ii) Actions qualifying for General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. In most cases, tracking will be the responsibility of the Federal action agency, but NMFS also may agree to track actions for which General Concurrence has been authorized. Tracking should include numbers of actions, amount of habitat adversely affected, type of habitat adversely affected, and the baseline against which the action will be tracked. The agency responsible for tracking such actions should make the information available to NMFS, the Councils, and to the public on an annual basis.

(iii) Categories of Federal actions may also qualify for General Concurrence if they are modified by appropriate conditions that ensure the actions will meet the criteria in paragraph (f)(2)(i) of this section. For example, NMFS may provide General Concurrence for additional actions contingent upon project size limitations, seasonal restrictions, or other conditions.

(iv) If a General Concurrence is developed for actions affecting habitat areas of particular concern, the General Concurrence should be subject to a higher level of scrutiny than a General Concurrence not involving a habitat area of particular concern.

(3) *General Concurrence development.* A Federal agency may request a General Concurrence for a category of its actions by providing NMFS with a written description of the nature and approximate number of the proposed actions, an analysis of the effects of the actions on EFH and associated species and their life history stages, including cumulative effects, and the Federal agency's conclusions regarding the magnitude of such effects. If NMFS agrees that the actions fit the criteria in paragraph (f)(2) of this section, NMFS, after consultation with the appropriate Council(s), will provide the Federal agency with a written statement of General Concurrence that further consultation is not required, and that preparation of EFH Assessments for individual actions subject to the General Concurrence is not necessary. If NMFS does not agree that the actions fit the criteria in paragraph (f)(2) of this section, NMFS will notify the Federal agency that a General Concurrence will not be issued and that abbreviated or expanded consultation will be required. If NMFS identifies specific types of Federal actions that may meet the requirements for a General Concurrence, NMFS may initiate and complete a General Concurrence.

(4) *Notification and further consultation.* NMFS may request notification for actions covered under a General Concurrence if NMFS concludes there are circumstances under which such actions could result in more than a minimal impact on EFH, or if it determines that there is not a process in place to adequately assess the cumulative impacts of actions covered under the General Concurrence. NMFS may require further consultation for these actions on a case-by case basis. Each General Concurrence should establish specific procedures for further consultation, if appropriate.

(5) *Public review.* Prior to providing any Federal agency with a written statement of General Concurrence for a category of Federal actions, NMFS will

provide an opportunity for public review through the appropriate Council(s), or other reasonable opportunity for public review.

(6) *Revisions.* NMFS will periodically review and revise its findings of General Concurrence, as appropriate.

(g) *EFH Assessments*—(1) *Preparation requirement.* For any Federal action that may adversely affect EFH, except for those activities covered by a General Concurrence, Federal agencies must provide NMFS with a written assessment of the effects of that action on EFH. Federal agencies may incorporate an EFH Assessment into documents prepared for other purposes such as ESA Biological Assessments pursuant to 50 CFR part 402 or NEPA documents and public notices pursuant to 40 CFR part 1500. If an EFH Assessment is contained in another document, it must include all of the information required in paragraph (g)(2) of this section and be clearly identified as an EFH Assessment. The procedure for combining an EFH consultation with other consultation of environmental reviews is set forth in paragraph (e) of this section.

(2) *Mandatory contents.* The assessment must contain:

(i) A description of the proposed action.

(ii) An analysis of the effects, including cumulative effects, of the proposed action on EFH, the managed species, and associated species, such as major prey species, including affected life history stages.

(iii) The Federal agency's views regarding the effects of the action on EFH.

(iv) Proposed mitigation, if applicable.

(3) *Additional information.* If appropriate, the assessment should also include:

(i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.

(ii) The views of recognized experts on the habitat or species that may be affected.

(iii) A review of pertinent literature and related information.

(iv) An analysis of alternatives to the proposed action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH, particularly when an action is nonwater dependent.

(v) Other relevant information.

(4) *Incorporation by reference.* The assessment may incorporate by reference a completed EFH Assessment prepared for a similar action, supplemented with any relevant new project specific information, provided the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting. It may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS with an EFH Assessment.

(h) *Abbreviated consultation procedures*—(1) *Purpose and criteria.* Abbreviated consultation allows NMFS to quickly determine whether, and to what degree, a Federal action may adversely affect EFH. Federal actions that may adversely affect EFH should be addressed through the abbreviated consultation procedures when those actions do not qualify for a General Concurrence, but do not have the potential to cause substantial adverse effects on EFH. For example, the abbreviated consultation procedures should be used when the adverse effect(s) of an action or proposed action could be alleviated through minor modifications.

(2) *Notification by agency.* The Federal agency should notify NMFS and, if NMFS so requests, the appropriate Council(s), in writing as early as practicable regarding proposed actions that may adversely affect EFH. Notification will facilitate discussion of measures to conserve the habitat. Such early consultation should occur during preapplication planning for projects subject to a Federal permit or license, and during preliminary planning for projects to be funded or undertaken directly by a Federal agency.

(3) *Submittal of EFH Assessment.* The Federal agency must submit a completed EFH Assessment, prepared in accordance with paragraph (g) of this section, to NMFS for review. Federal agencies will have fulfilled their consultation requirement under paragraph (a) of this section after notification and submittal of a complete EFH Assessment.

(4) *NMFS response to Federal agency.* NMFS must respond in writing as to whether it concurs with the findings of the EFH Assessment. If NMFS believes that the proposed action may result in substantial adverse effects on EFH, or that additional analysis is needed to accurately assess the effects of the proposed action, NMFS will request that the Federal agency initiate expanded consultation. Such request will explain why NMFS believes expanded consultation is needed and will specify any new information needed. If additional consultation is not necessary, NMFS will respond by commenting and recommending measures that may be taken to conserve EFH, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act. NMFS will send a copy of its response to the appropriate Council.

(5) *Timing.* The Federal action agency must submit its complete EFH Assessment to NMFS as soon as practicable, but NMFS must receive it at least 60 days prior to a final decision on the action. NMFS must respond in writing within 30 days. NMFS and the Federal action agency may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 30 days for consultation, or to conduct consultation earlier in the planning cycle for proposed actions with lengthy approval processes.

(i) *Expanded consultation procedures*—(1) *Purpose and criteria.* Expanded consultation allows maximum opportunity for NMFS and the Federal agency to work together in the review of the action's impacts on EFH and the development of EFH conservation recommendations. Expanded consultation procedures must be used for Federal actions that would result in substantial adverse effects to EFH. Federal agencies are encouraged to contact NMFS at the earliest opportunity to discuss whether the adverse effect of a proposed action makes expanded consultation appropriate.

(2) *Initiation.* Expanded consultation begins when NMFS receives from the Federal agency an EFH Assessment completed in accordance with paragraph (g) of this section and a written request for expanded consultation. Federal action agencies are encouraged to provide in the EFH Assessment the additional information identified under paragraph (g)(3) of this section. Subject to NMFS's approval, any request for expanded consultation may encompass a number of similar individual actions within a given geographic area.

(3) *NMFS response to Federal agency.* NMFS will:

(i) Review the EFH Assessment, any additional information furnished by the Federal agency, and other relevant information.

(ii) Conduct a site visit, if appropriate, to assess the quality of the habitat and to clarify the impacts of the Federal agency action. Such a site visit should be coordinated with the Federal agency and appropriate Council(s), if feasible.

(iii) Coordinate its review of the proposed action with the appropriate Council(s).

(iv) Discuss EFH conservation recommendations with the Federal agency and provide recommendations to the Federal action agency, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act. NMFS will also provide a copy of the recommendations to the appropriate Council(s).

(4) *Timing.* The Federal action agency must submit its complete EFH Assessment to NMFS as soon as practicable, but at least 90 days prior to a final decision on the action. NMFS must respond within 60 days of submittal of a complete EFH Assessment unless consultation is extended by agreement between NMFS and the Federal action agency. NMFS and Federal action agencies may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate a 60-day consultation period.

(5) *Extension of consultation.* If NMFS determines that additional data or analysis would provide better information for development of EFH conservation recommendations, NMFS may request additional time for expanded consultation. If NMFS and the Federal action agency agree to an extension, the Federal action agency should provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal action agency do not agree to extend consultation,

NMFS must provide EFH conservation recommendations to the Federal action agency using the best scientific information available to NMFS.

(j) *Responsibilities of Federal action agency following receipt of EFH conservation recommendations*—(1) *Federal action agency response.* As required by section 305(b)(4)(B) of the Magnuson-Stevens Act, the Federal action agency must provide a detailed response in writing to NMFS and the appropriate Council within 30 days after receiving an EFH conservation recommendation. Such a response must be provided at least 10 days prior to final approval of the action, if a decision by the Federal agency is required in fewer than 30 days. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS conservation recommendations, the Federal action agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(2) *Further review of decisions inconsistent with NMFS or Council recommendations.* If a Federal action agency decision is inconsistent with a NMFS EFH conservation recommendation, the Assistant Administrator for Fisheries may request a meeting with the head of the Federal action agency, as well as any other agencies involved, to discuss the proposed action and opportunities for resolving any disagreements. If a Federal action agency decision is also inconsistent with a Council recommendation made pursuant to section 305(b)(3) of the Magnuson-Stevens Act, the Council may request that the Assistant Administrator initiate further review of the Federal agency's decision and involve the Council in any interagency discussion to resolve disagreements with the Federal agency. The Assistant Administrator will make every effort to accommodate such a request. Memoranda of agreement or other written procedures will be developed to further define such review processes with Federal action agencies.

(k) *Supplemental consultation.* A Federal action agency must reinitiate consultation with NMFS if the agency substantially revises its plans for an action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations.

§ 600.925 NMFS EFH conservation recommendations to Federal and state agencies.

(a) *General.* Under section 305(b)(4) of the Magnuson-Stevens Act, NMFS is required to provide EFH conservation recommendations to Federal and state agencies for actions that would adversely affect EFH. NMFS EFH conservation recommendations will not suggest that state or Federal agencies take actions beyond their statutory authority.

(b) *Recommendations to Federal agencies.* For Federal actions, EFH conservation recommendations will be provided to Federal action agencies as part of EFH consultations conducted pursuant to § 600.920. These recommendations fulfill the requirements of section 305(b)(4)(A) of the Magnuson-Stevens Act. If NMFS becomes aware of a Federal action that would adversely affect EFH, but for which a Federal agency has not completed an EFH consultation, NMFS may request that the Federal agency initiate EFH consultation or NMFS will provide EFH conservation recommendations based on the information available. NMFS will provide a copy of such recommendation to the appropriate Council(s).

(c) *Recommendations to state agencies*—(1) *Establishment of procedures.* Each NMFS Region should use existing coordination procedures under statutes such as the Coastal Zone Management Act or establish new procedures to identify state actions that may adversely affect EFH, and for determining the most appropriate method for providing EFH conservation recommendations to the state agency. NMFS will provide a copy of such recommendation to the appropriate Council(s).

(2) *Coordination with states on recommendations to Federal agencies.* When an action that would adversely affect EFH requires authorization or funding by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH conservation recommendations developed as part of the Federal consultation procedures in § 600.920. NMFS will also seek agreements on sharing information and copies of recommendations with Federal or state agencies conducting similar consultation and recommendation processes to ensure coordination of such efforts.

§ 600.930 Council comments and recommendations to Federal and state agencies.

(a) *Establishment of procedures.* Each Council should establish procedures for reviewing Federal or state actions that may adversely affect the EFH of a species managed under its authority. Each Council may receive information on actions of concern by methods such as: Directing Council staff to track proposed actions; recommending that the Council's habitat committee identify actions of concern; or entering into an agreement with NMFS to have the appropriate Regional Administrator notify the Council of actions that may adversely impact EFH. Federal and state actions often follow specific timetables which may not coincide with Council meetings. Therefore, Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(b) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal actions of concern as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency. Copies of Council comments and recommendations should be provided to NMFS.

(c) *Anadromous fishery resources.* For the purposes of the commenting requirement of section 305(b)(3)(B) of the Magnuson-Stevens Act, an ''anadromous fishery resource under a Council's authority'' is an anadromous species that inhabits waters under the Council's authority at some time during its life cycle.

Subpart L—Fishing Capacity Reduction

AUTHORITY: 16 U.S.C. 1861a(b)–(e).

SOURCE: 65 FR 31443, May 18, 2000, unless otherwise noted.

§ 600.1000 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings:

Address of Record means the business address of a person, partnership, or corporation. Addresses listed on permits or other NMFS records are presumed to be business addresses, unless clearly indicated otherwise.

Bid means the price a vessel owner or reduction fishery permit holder requests for reduction of his/her fishing capacity. It is an irrevocable offer in response to the invitation to bid in § 600.1009.

Borrower means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery.

Business plan means the document containing the information specified in § 600.1003(n) and required to be submitted with a request for a financed program.

Business week means a 7-day period, Saturday through Friday.

Controlling fishery management plan or program (CFMP) means either any fishery management plan or any state fishery management plan or program, including amendments to the plan or program, pursuant to which a fishery is managed.

Delivery value means:

(1) For unprocessed fish, all compensation that a fish buyer pays to a fish seller in exchange for fee fish; and

(2) For processed fish, all compensation that a fish buyer would have paid to a fish seller in exchange for fee fish if the fee fish had been unprocessed fish instead of processed fish.

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services

exchanged in lieu of cash. It is synonymous with the statutory term ''ex-vessel value'' as used in section 312 of the Magnuson Act.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated account maintained at a federally insured financial institution for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying a reduction loan.

Fair market value means the amount that a buyer pays a seller in an arm's length transaction or, alternatively, would pay a seller if the transaction were at arm's length.

Fee means the amount that fish buyers deduct from the delivery value under a financed reduction program. The fee is the delivery value times the reduction fishery's applicable fee rate under section 600.1013.

Fee fish means all fish harvested from a reduction fishery involving a financed program during the period in which any amount of the reduction loan remains unpaid. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery.

Final development plan means the document NMFS prepares, under §600.1006(b) and based on the preliminary development plan the requester submits, for a subsidized program.

Financed means funded, in any part, by a reduction loan.

Fish buyer means the first ex-vessel party who:

(1) in an arm's—length transaction, purchases fee fish from a fish seller;

(2) takes fish on consignment from a fish seller; or

(3) otherwise receives fish from a fish seller in a non arm's-length transaction.

Fish delivery means the point at which a fish buyer first purchases fee fish or takes possession of fee fish from a fish seller.

Fishing capacity reduction specifications means the minimum amount of fishing capacity reduction and the maximum amount of reduction loan principal specified in a business plan.

Fish seller means the party who harvests and first sells or otherwise delivers fee fish to a fish buyer.

Fishery Management Plan (FMP) means any Federal fishery management plan, including amendments to the plan, that the Secretary of Commerce approves or adopts pursuant to section 303 of the Magnuson-Stevens Act.

Fund means the Fishing Capacity Reduction Fund, and each subaccount for each program, established in the U.S. Treasury for the deposit into, and disbursement from, all funds, including all reduction loan capital and all fee revenue, involving each program.

Implementation plan means the plan in §600.1008 for carrying out each program.

Implementation regulations mean the regulations in §600.1008 for carrying out each program.

Net delivery value means the delivery value minus the fee.

Post-bidding referendum means a referendum that follows bidding under §600.1009.

Post-reduction means after a program reduces fishing capacity in a reduction fishery.

Pre-bidding referendum means a referendum that occurs at any time after a request for a financed program but before a proposal under §600.1008 of a implementation plan and implementation regulations.

Preliminary development plan means the document specified in §600.1005(g) and required to be submitted with a request for a subsidized program.

Processed fish means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

Program means each instance of reduction under this subpart, in each reduction fishery—starting with a request and ending, for a financed program, with full reduction loan repayment.

Reduction means the act of reducing fishing capacity under any program.

Reduction amendment means any amendment, or, where appropriate, framework adjustment, to a CFMP

that may be necessary for a program to meet the requirements of this subpart.

Reduction amendment specifications mean the reduction amendment to a CFMP specified in a business plan.

Reduction contract means the invitation to bid under § 600.1009, together with each bidder's irrevocable offer and NMFS' conditional or non-conditional acceptance of each such bid under § 600.1009.

Reduction cost means the total dollar amount of all reduction payments to fishing permit owners, fishing vessel owners, or both, in a reduction fishery.

Reduction fishery means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, fishing vessel size, geographic area, and any other relevant factor(s).

Reduction loan means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and repayable by a fee under, and in accordance with, § 600.1012, § 600.1013, and § 600.1014.

Reduction payment means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a reduction contract. Additionally, it is payment for reduction to each bidder whose bid NMFS accepts under § 600.1009. In a financed program each reduction payment constitutes a disbursement of a reduction loan's proceeds and is for either revoking a fishing permit or both revoking a fishing permit and withdrawing a vessel from fishing either by scrapping or title restriction.

Reduction permit means any fishing permit revoked in a program in exchange for a reduction payment under a reduction contract.

Reduction vessel means any fishing vessel withdrawn from fishing either by scrapping or title restriction in exchange for a reduction payment under a reduction contract.

Referendum means the voting process under § 600.1010 for approving the fee system for repaying a reduction loan.

Request means a request, under § 600.1001, for a program.

Requester means a Council for a fishery identified in § 600.1001(c), a state governor for a fishery identified in § 600.1001(d), or the Secretary for a fishery identified in § 600.1001(e).

Scrap means to completely and permanently reduce a fishing vessel's hull, superstructures, and other fixed structural components to fragments having value, if any, only as raw materials for reprocessing or for other non-fisheries use.

Subsidized means wholly funded by anything other than a reduction loan.

Treasury percentage means the annual percentage rate at which NMFS must pay interest to the U.S. Treasury on any principal amount that NMFS borrows from the U.S. Treasury in order to generate the funds with which to later disburse a reduction loan's principal amount.

Unprocessed fish means fish in the same form as the fish existed at the time the fish was harvested, unless any difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

Vote means a vote in a referendum.

§ 600.1001 Requests.

(a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

(b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils

must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.

(d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.

(e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.

(f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

§600.1002 General requirements.

(a) Each program must be: (1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;

(2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and

(3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.

(b) Each CFMP for a reduction fishery must: (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;

(2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(3) Include, for a financed program in a reduction fishery involving only a portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

§600.1003 Content of a request for a financed program.

A request for a financed program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.

(d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(a).

(f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(b).

(g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.

(h) Request that NMFS conduct, at the appropriate time, a referendum under §600.1010 of this subpart.

(i) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be

based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.

(j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.

(k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(1) The characteristics of the fishery;

(2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;

(3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;

(4) The reduction amendment required;

(5) The needs of fishing communities;

(6) Minimizing the program's reduction cost; and

(7) All other relevant factors.

(l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts.

(m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations.

(n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:

(1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least reduction cost and in the minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Establish the appropriate point for NMFS to conduct a pre-bidding referendum and be sufficiently detailed to enable NMFS to readily:

(A) Design, propose, and adopt a timely and reliable implementation plan,

(B) Propose and issue timely and reliable implementation regulations,

(C) Invite bids,

(D) Accept or reject bids, and

(E) Complete a program in accordance with this subpart, and

(ii) Address, consistently with this subpart:

(A) The contents and terms of invitations to bid,

(B) Bidder eligibility,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

(F) Any referendum procedures in addition to, but consistent with, those in § 600.1010, and

(G) All other technical matters necessary to conduct a program;

(2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;

(3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under § 600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;

(4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;

(5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at

various reduction-level increments reasonably greater than the minimum one, based on the:

(i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and

(ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;

(6) Demonstrates how the business plan's proposed program meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(a);

(7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(b);

(8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which the pre-bidding referendum will be based;

(9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;

(10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;

(11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in §600.1013 and/or §600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of §600.1013 and/or §600.1014—including, but not limited to:

(i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and

(ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and

(12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.

(o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a program in accordance with this subpart.

§600.1004 Accepting a request for, and determinations about initiating, a financed program.

(a) *Accepting a request*. Once it receives a request, NMFS will review any request for a financed program to determine whether the request conforms with the requirements of §600.1003. If the request does not conform, NMFS will return the request with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the FEDERAL REGISTER requesting public comments on the request. Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record. If, in NMFS' discretion, the comments received in response to such notice warrants it, or other good cause warrants it, NMFS may modify such list by publishing another notice in the FEDERAL REGISTER.

(b) *Determination about initiating a financed program.* After receipt of a conforming request for a financed program, NMFS will, after reviewing and responding to any public comments received in response to the notice published in the FEDERAL REGISTER under paragraph (a) of this section, initiate the program if NMFS determines that:

(1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(3) The program, if successfully implemented, is cost effective;

(4) The reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart; and

(5) The program accords with all other applicable law.

§ 600.1005 Content of a request for a subsidized program.

A request for a subsidized program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.

(d) Project the availability of Federal appropriations or other funding, if any, that completion of the program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.

(f) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (e) of this section.

(g) Include a preliminary development plan that: (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and

(ii) Include:

(A) The contents and terms of invitations to bid,

(B) Eligible bidders,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids, and

(E) The terms of bid acceptances;

(2) Specifies the criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(i) The characteristics of the fishery,

(ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited

by size of fishing vessel operated, geographic area of operation, or other factor,

(iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

(vi) The need to minimize the program's reduction cost; and

(3) Demonstrates the program's cost effectiveness.

(h) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(a).

(i) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(b)(1) and (2).

(j) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed implementation plan and proposed implementation regulations.

(k) Include the requester's statement of belief that the program constitutes a reasonably realistic and practical prospect for successfully completing a program in accordance with this subpart.

§600.1006 Accepting a request for, and determinations about conducting, a subsidized program.

(a) *Accepting a request.* NMFS will review any request for a subsidized program submitted to NMFS to determine whether the request conforms with the requirements of §600.1005. If the request does not conform, NMFS will return it with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the FEDERAL REGISTER requesting public comments about the request.

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit the plan to the requester for the requester's reaffirmation of the request. Based on the final development plan, the reaffirmation shall: (1) Certify that the final development plan meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(a);

(2) Certify that the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(b)(1) and (2); and

(3) Project the date on which the requester will forward any necessary reduction amendment and, if the requester is a Council, proposed regulations to implement the reduction amendment. The requester shall base any necessary reduction amendment on the final development plan.

(d) *Determinations about conducting a subsidized program.* After NMFS' receipt of the requester's reaffirmation, any required reduction amendment, and any proposed regulations required to implement the amendment, NMFS will initiate the program if NMFS determines that:

(1) The program meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(b)(1) and (2); and

(3) The program is reasonably capable of being successfully implemented;

(4) The program, if successfully implemented, will be cost effective; and

(5) The program is in accord with all other applicable provisions of the Magnuson-Stevens Act and this subpart.

§ 600.1007 Reduction amendments.

(a) Each reduction amendment may contain provisions that are either dependent upon or independent of a program. Each provision of a reduction amendment is a dependent provision unless the amendment expressly designates the provision as independent.

(b) Independent provisions are effective without regard to any subsequent program actions.

(c) Dependent provisions are initially effective for the sole limited purpose of enabling initiation and completion of the pre-reduction processing stage of a program.

(d) All dependent provisions of a reduction amendment for a financed program are fully in force and effect for all other purposes only when NMFS either:

(1) For bidding results that conform to the fishing capacity reduction specifications and are not subject to any other condition, notifies bidders, under § 600.1009(e)(3), that reduction contracts then exist between the bidders and the United States; or

(2) For bidding results that do not conform to the fishing capacity reduction specifications or are subject to any other condition, notifies bidders whose bids NMFS had conditionally accepted, under § 600.1010 (d)(8)(iii), that the condition pertaining to the reduction contracts between them and the United States is fulfilled.

(e) If NMFS does not, in accordance with this subpart and any special provisions in the implementation regulations, subsequently make all reduction payments that circumstances, in NMFS' judgment, reasonably permit NMFS to make and, thus, complete a program, no dependent provisions shall then have any further force or effect for any purpose and all final regulations involving such dependent provisions shall then be repealed.

§ 600.1008 Implementation plan and implementation regulations.

(a) As soon as practicable after deciding to initiate a program, NMFS will prepare and publish, for a 60-day public comment period, a proposed implementation plan and implementation regulations. During the public comment period, NMFS will conduct a public hearing of the proposed implementation plan and implementation regulations in each state that the program affects.

(b) To the greatest extent practicable, NMFS will base the implementation plan and implementation regulations for a financed program on the business plan. The implementation plan for a financed program will describe in detail all relevant aspects of implementing the program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The maximum reduction loan amount, if different from the maximum reduction cost;

(5) The reduction cost funding, if any, other than a reduction loan;

(6) The minimum acceptable reduction level;

(7) The potential amount of the fee;

(8) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(9) The invitation to bid and bidding procedures;

(10) The criteria for determining bid acceptance;

(11) The referendum procedures; and

(12) Any relevant post-referendum reduction procedures other than those in the implementation regulations or this subpart.

(c) NMFS will base each implementation plan and implementation regulations for a subsidized program on the final development plan. The implementation plan will describe in detail all relevant aspects of implementing the program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The reduction-cost funding, if any, other than Federal appropriations;

(5) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(6) The invitation to bid and bidding procedures;

(7) The criteria for determining bid acceptance; and

(8) Any relevant post-bidding program procedures other than those in

the implementation regulations or this subpart.

(d) The implementation regulations will:

(1) Specify, for invitations to bid, bids, and reduction contracts under §600.1009:

(i) Bidder eligibility,

(ii) Bid submission requirements and procedures,

(iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(v) The manner of bid submission and the information each bidder shall supply for NMFS to deem a bid responsive,

(vi) The conditions under which NMFS will accept or reject a bid,

(vii) The manner in which NMFS will accept or reject a bid, and

(viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;

(2) Specify any other special referendum procedures or criteria; and

(3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:

(i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with §600.1013 and §600.1014,

(ii) Prospective fee rate determinations, and

(iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

(e) NMFS will issue final implementation regulations and adopt a final implementation plan within 45 days of the close of the public-comment period.

(f) NMFS may repeal the final implementation regulations for any program if:

(1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not subsequently approve an industry fee system based on the bidding results;

(2) For a subsidized program, NMFS does not accept bids; and

(3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

§600.1009 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section:

(1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

(i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and

(ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

(2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;

(3) For a financed program in which bidding results do not conform to the fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under §600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs,

NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs—all as otherwise provided in paragraph (a)(3) of this section;

(5) Upon NMFS' acceptance of the bid and tender of a reduction payment, the bidder consents to:

(i) The revocation, by NMFS, of any reduction permit, and

(ii) Where the program also involves the withdrawal of reduction vessels from fishing:

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing in any area subject to the jurisdiction of the United States or any state, territory, commonwealth, or possession of the United States, or

(B) Where reduction vessel scrapping is involved and the reduction vessel's owner does not comply with the owner's obligation under the reduction contract to scrap the reduction vessel, take such measures as necessary to cause the reduction vessel's prompt scrapping. The scrapping will be at the reduction vessel owner's risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost or expense NMFS incurred in causing the reduction vessel to be scrapped and any other damages NMFS may have incurred and such owner shall be liable to the United States for such cost, expenses, and damages;

(6) Money damages not being an adequate remedy for a bidder's breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, the scrapping of a reduction vessel;

(7) Any reduction payment is available, upon timely and adequately documented notice to NMFS, to satisfy liens, as allowed by law, against any reduction permit/and or reduction vessel; provided, however, that:

(i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder's interest,

(ii) No reduction payment in any way gives rise to any

liability of the United States for the obligation underlying any lien,

(iii) No lien holder has any right or standing, not otherwise provided by law, against the United States in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart, and

(iv) This subpart does not provide any lien holder with any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made, or has agreed to make, any reduction payment. A lien holder is limited to recovery against the holder of the reduction permit or the owner of the reduction vessel as otherwise provided by law; and

(8) Each invitation to bid may specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract or otherwise to ensure completing each program. This includes, but is not limited to, each bidder's certification, subject to the penalties in § 600.1017, of the bidder's full authority to submit each bid and to dispose of the property involved in the bid in the manner contemplated by each invitation to bid.

(b) NMFS will not invite bids for any program until NMFS determines that:

(1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

(2) The final implementation plan is adopted and the final implementation regulations are issued;

(3) All required program funding is approved and in place, including all Federal appropriation and apportionment authority;

(4) Any reduction loan involved is fully approved;

(5) Any non-Federal funding involved is fully available at the required time for NMFS disbursement as reduction payments; and

(6) All other actions necessary to disburse reduction payments, except for matters involving bidding and post-bidding referenda, are completed.

(c) After making the affirmative determinations required under paragraph (b) of this section, NMFS will publish a FEDERAL REGISTER notice inviting eligible bidders to offer to the United States, under this subpart, fishing capacity for reduction.

(d) NMFS may extend a bid closing date and/or a bid expiration date for a reasonable period. NMFS may also issue serial invitations to bid if the result of previous bidding, in NMFS' judgment, warrant this.

(e) After the bid expiration date, NMFS will:

(1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail at each bidder's address of

record, those bidders whose bids NMFS accepts that a reduction contract now exists between them and the United States—subject, where appropriate, to the conditions provided for elsewhere in this subpart.

(f) NMFS will keep confidential the identity of all bidders whose bids NMFS does not accept. In financed programs where bidding results do not conform to the fishing capacity reduction specifications, NMFS also will keep confidential the identity of all bidders whose bids NMFS does accept until after completing a successful post-bidding referendum under §600.1010.

§600.1010 Referenda.

(a) *Referendum success.* A referendum is successful if at least two-thirds of the ballots that qualify to be counted as referendum votes under subparagraph (d)(6) of this section are cast in favor of an industry fee system.

(b) *Pre-bidding referendum*—(1) *Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

(2) *Successful initial pre-bidding referendum.* If the initial pre-bidding referendum is successful, the reduction process will proceed as follows:

(i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted,

(ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

(3) *Unsuccessful initial pre-bidding referendum.* If the initial pre-bidding referendum is unsuccessful, the reduction process will either cease or NMFS may suspend the process pending an appropriate amendment of the business plan and the request.

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under §600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and

such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in any amount materially less than the minimum amount in the fishing capacity reduction specifications.

(d) NMFS will conduct referenda in accordance with the following: (1) *Eligible voters.* The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the FEDERAL REGISTER under § 600.1004(a);

(2) *Ballot issuance.* NMFS will mail, by U.S. certified mail, return receipt requested, a ballot to each eligible voter. Each ballot will bear a randomly derived, 5-digit number assigned to each eligible voter. Each ballot will contain a place for the voter to vote for or against the proposed industry fee system and a place, adjacent to the 5-digit number, for the signature of the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf. Each ballot will contain a place for the person signing the ballot to print his or her name. NMFS will enclose with each ballot a specially-marked, postage-paid, pre-addressed envelope that each voter shall use to return the ballot to NMFS;

(3) *Voter certification.* Each ballot will contain a certification, subject to the penalties set forth in § 600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf;

(4) *Information included on a ballot.* Each ballot mailing will:

(i) Summarize the referendum's nature and purpose,

(ii) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a qualified vote,

(iii) Identify the place on the ballot for the voter to vote for or against the proposed industry fee system, the place on the ballot where the voter shall sign the ballot, and the purpose of the return envelope,

(iv) For each pre-bidding referendum, state:

(A) The fishing capacity reduction specifications,

(B) The reduction loan's repayment term, and

(C) The fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over the loan's term,

(v) For each initial pre-bidding referendum that precedes reduction amendment adoption, state the reduction amendment specifications,

(vi) For each initial pre-bidding referendum that follows reduction amendment adoption, summarize the material aspects of the reduction amendment adopted,

(vii) For each second pre-bidding referendum, summarize how the adopted reduction amendment materially differs from the reduction amendment specifications upon which a successful initial pre-bidding referendum occurred and how this material difference affects the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan,

(viii) For each post-bidding referendum, specify the actual bidding results that do not conform to the fishing capacity reduction specifications, and

(ix) State or include whatever else NMFS deems appropriate;

(5) *Enclosures to accompany a ballot.* Each ballot mailing will include:

(i) A specially-marked, postage-paid, and pre-addressed envelope that a voter must use to return the original of a ballot to NMFS by whatever means of delivery the voter chooses, and

(ii) Such other materials as NMFS deems appropriate;

(6) *Vote qualification.* A completed ballot qualifies to be counted as a vote if the ballot:

(i) Is physically received by NMFS on or before the last day NMFS specifies for receipt of the ballot,

(ii) Is cast for or against the proposed industry fee system,

(iii) Is signed by the voter,

(iv) Is the original ballot NMFS sent to the voter bearing the same 5-digit number that NMFS assigned to the voter, and

(v) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return;

(6) *Vote tally and notification.* NMFS will:

(i) Tally all ballots qualified to be counted as referendum votes,

(ii) Notify, by U.S. mail at the address of record, all eligible voters who received ballots of:

(A) The number of potential voters,

(B) The number of actual voters who returned a ballot,

(C) The number of returned ballots that qualified to be counted as referendum votes,

(D) The number of votes for and the number of votes against the industry fee system, and

(E) Whether the referendum was successful and approved the industry fee system or unsuccessful and disapproved the industry fee system, and

(iii) If a successful referendum is a post-bidding referendum, NMFS will, at the same time and in the same manner, also notify the bidders whose bids were conditionally accepted that the condition pertaining to the reduction contracts between them and the United States is fulfilled;

(7) *Conclusiveness of referendum determinations.* NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation under §600.1013 and §600.1014 necessary to repay any reduction loan;

(8) *Ballot confidentiality.* NMFS will not voluntarily release the name of any party who voted. NMFS will restrict the availability of all voter information to the maximum extent allowed by law; and

(9) *Conclusive authorization of industry fee system.* Each successful referendum conclusively authorizes NMFS' imposition of an industry fee system—including the fee payment, collection, and other provisions regarding fee payment and collection under §600.1013 and §600.1014—to repay the reduction loan for each financed program that NMFS conducts under this subpart.

§600.1011 Reduction methods and other conditions.

(a) *Reduction permits or reduction permits and reduction vessels.* Each program may involve either the surrender and revocation of reduction permits or both the surrender and revocation of reduction permits and the withdrawal from fishing either by title restriction or by scrapping of reduction vessels. No financed program may, however, require such title restriction or scrapping of reduction vessels unless the business plan voluntarily includes the same.

(b) *Reduction permit revocation and surrender.* Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.

(c) *Reduction vessel title restriction or scrapping.* For each program that involves reduction vessel title restriction or scrapping:

(1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon

NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

(2) Each reduction vessel owner whose reduction vessel is required to be scrapped shall, upon NMFS' tender of the reduction payment, immediately cease all further use of the reduction vessel and arrange, without delay and at the reduction vessel owner's expense, to scrap the reduction vessel to NMFS' satisfaction, including adequate provision for NMFS to document the physical act of scrapping; and

(3) Each reduction vessel owner, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel and with the reduction permit that could qualify the reduction vessel owner or the reduction permit holder for any present or future limited access system fishing permit in the reduction fishery.

(d) *Fishing permits in a non-reduction fishery*. A financed program that does not involve the withdrawal from fishing or scrapping of reduction vessels may not require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or restrict or revoke any fishing permit other than a reduction permit in the reduction fishery, except those fishing permits authorizing the incidental harvesting of species in any non-reduction fishery during, and as a consequence of, directed fishing for species in the reduction fishery.

(e) *Reduction vessels disposition*. Where a business plan requires the withdrawal from fishing of reduction vessels as well as the revocation of reduction permits: (1) Each reduction vessel that is not documented under Federal law must in every case always be scrapped, without regard to whether a program is a financed program or a subsidized program;

(2) No financed program may require any disposition of a reduction vessel documented under Federal law other than the title restriction in paragraph (b) of this section unless the business plan volunteers to do otherwise; and

(3) Any subsidized program may require the scrapping of reduction vessels documented under Federal law.

(f) *Reduction payments*. NMFS will disburse all reduction payments in the amount and in the manner prescribed in reduction contracts, except reduction payments that a bidder's reduction-contract nonperformance prevents NMFS from disbursing. In financed programs, the reduction loan's principal amount is the total amount of all reduction payments that NMFS disburses from the proceeds of a reduction loan. Any reduction payment that NMFS, because of a bidder's reduction-contract nonperformance, disburses but subsequently recovers, shall reduce the principal amount of the reduction loan accordingly.

(g) *Effect of reduction-contract nonperformance*. No referendum, no reduction contract, no reduction loan, and no fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan, shall be impaired, invalidated, avoided, or otherwise rendered unenforceable by virtue of any reduction contract's nonperformance. This is without regard to the cause of, or reason for, nonperformance. NMFS shall endeavor to enforce the specific performance of all reduction contracts, but NMFS' inability, for any reason, to enforce specific performance for any portion of such reduction contracts shall not relieve fish sellers of their obligation to pay, and fish buyers of their obligation to collect, the fee necessary to fully repay the full reduction loan balance that results from all reduction payments that NMFS actually makes and does not recover.

(h) *Program completion*. Other than the payment and collection of the fee that repays a reduction loan and any other residual matters regarding reduction payments and the disposition of reduction permits and reduction vessels, a program shall be completed when NMFS tenders or makes all reduction payments under all reduction

contracts that circumstances, in NMFS' judgment, reasonably permit NMFS to make.

§600.1012 Reduction loan.

(a) *Obligation*. The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a reduction loan shall be discharged by fish sellers paying a fee in accordance with §600.1013. Fish buyers shall be obligated to collect the fee in accordance with §600.1013 and to deposit and disburse the fee revenue in accordance with §600.1014.

(b) *Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection*. The reduction loan shall be:

(1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;

(2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage;

(3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

(4) Subject to such provisions as implementation regulations shall specify for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with §600.1013 and §600.1014.

(c) *Effect of prospective interest rate*. Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.

§600.1013 Fee payment and collection.

(a) *Amount*. The fee amount is the delivery value times the fee rate.

(b) *Rate*. NMFS will establish the fee rate. The fee rate may not exceed 5 percent of the delivery value. NMFS will establish the initial fee rate by calculating the fee revenue annually required to amortize a reduction loan over the reduction loan's term, projecting the annual delivery value, and expressing such fee revenue as a percentage of such delivery value. Before each anniversary of the initial fee rate determination, NMFS will recalculate the fee rate reasonably required to ensure reduction loan repayment. This will include any changed delivery value projections and any adjustment required to correct for previous delivery values higher or lower than projected.

(c) *Payment and collection*. (1) The full fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value, rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2) In the event of any post-delivery payment for fee fish— including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery

value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

(3)(i) Each fish seller shall be deemed to be, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, both the fish seller and the fish buyer, and shall be responsible for all requirements and liable for any penalties under this subpart applicable to fish sellers and/or fish buyers, each time that a fish seller sells fee fish to:

(A) Any party whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any party who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other party not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, either with or without processing the fish, or

(C) Any other party who the fish seller has good reason to believe is a party not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, record keeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in accordance this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

(d) *Notification*. (1) At least 30 days before the effective date of any fee or of any fee rate change, NMFS will publish a FEDERAL REGISTER notice establishing the date from and after which the fee or fee rate change is effective. NMFS will then also send, by U.S. mail, an appropriate notification to each affected fish seller and fish buyer of whom NMFS has notice;

(2) When NMFS determines that a reduction loan is fully repaid, NMFS will publish a FEDERAL REGISTER notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send, by U.S. mail, notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail, or if the fish seller or fish buyer otherwise does not receive the notice, of the date fee payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

(e) *Failure to pay or collect*. (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason, if known, for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason, if known, for refusing to pay the fee in accordance with this subpart.

(f) *Implementation regulations at variance with this section*. If any special circumstances in a reduction fishery require, in NMFS's judgment, fee payment and/or collection provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

§600.1014 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts*. Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits*. Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement*. On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to the Fund subaccount to which the deposit principal relates. The fish buyer shall mail each such check to the Fund subaccount lockbox that NMFS establishes for the receipt of the disbursements for each program. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund subaccount lockbox and the manner and form of settlement sheet by means of the notification in §600.1013(d).

(d) *Records maintenance*. Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date of delivery,

(ii) The seller's identity,

(iii) The weight, number, or volume of each species of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value of each species of fee fish,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the Fund's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;

(2) Total delivery value paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to each Fund lockbox account;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of reduction loans, the financial records of fish buyers and fish sellers in each reduction fishery in order to ensure proper fee payment, collection, deposit, disbursement, accounting, record keeping, and reporting. Fish buyers and fish sellers shall make all records of all program transactions involving post-reduction fish harvests, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, record keeping, and reporting available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so and each price that each fish buyer then pays to each fish seller for the fee fish) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and NMFS' auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes).

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid,

NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(j) *Implementation regulations at variance with this section*. If any special circumstances in a reduction fishery require, in NMFS's judgment, fee collection deposit, disbursement, or records provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

§600.1015 Late charges.

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

§600.1016 Enforcement.

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

§600.1017 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for any party to:

(1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly or unlawfully influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable by specific performance, or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, any reduction contract, or any other reduction process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart, including NMFS' right under such reduction contracts to specific performance;

(8) Fail to fully and properly pay and collect any fee due payable, and collectible under this subpart or otherwise avoid, decrease, interfere with, hinder, or delay any such payment and collection,

(9) Convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(10) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the Fund's lockbox account—all as this subpart requires;

(11) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS–-all as this subpart requires;

(12) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(13) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(14) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(15) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(16) Otherwise materially interfere with the efficient and effective conduct of reduction and the repayment of reduction loans under this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide—including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses—and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

(c) Additionally, NMFS may take any and all appropriate actions, including the communication of action at law, against each party responsible for the non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and/or § 600.1014 to enforce the United States' receipt from such party of any fee—including penalties and all costs of collection—due and owing the United States on account of the reduction loan that such party should have, but did not, pay, collect, deposit, and/or disburse in accordance with § 600.1013 and/or § 600.1014. All such reduction loan recoveries shall be applied to reduce the unpaid balances of reduction loans.

§ 600.1018 Implementation regulations for each program. [Reserved]

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

Subpart A—General Provisions

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

SOURCE: 61 FR 34934, July 3, 1996, unless otherwise noted.

Subpart A—General Provisions

§622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, or South Atlantic EEZ, as indicated in Table 1 of this section. For the FMPs noted in the following table, conservation and management extends to adjoining state waters for the purposes of data collection and monitoring.

TABLE 1.—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
Atlantic Coast Red Drum FMP	SAFMC	Mid-Atlantic and South Atlantic.
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf,[1] Mid-Atlantic [1, 2] and South Atlantic.[1, 3]
FMP for Coral and Coral Reefs of the Gulf of Mexico.	GMFMC	Gulf.
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Golden Crab Fishery of the South Atlantic Region.	SAFMC	South Atlantic
FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Red Drum Fishery of the Gulf of Mexico.	GMFMC	Gulf.[1]
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Reef Fish Resources of the Gulf of Mexico.	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the Gulf of Mexico.	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region.	SAFMC	South Atlantic.[1, 4]
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
[2] Only king and Spanish mackerel and cobia are managed under the FMP in the Mid-Atlantic.
[3] Bluefish are not managed under the FMP in the South Atlantic.
[4] Bank, rock, and black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 65483, Dec. 13, 1996; 63 FR 10565, Mar. 4, 1998]

§622.2 Definitions and acronyms.

In addition to the definitions in the Magnuson Act and in §600.10 of this chapter, and the acronyms in §600.15 of this chapter, the terms and acronyms used in this part have the following meanings:

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish (e.g., quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

NOTE: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.

Aquacultured live rock means live rock that is harvested under a Federal aquacultured live rock permit, as required under § 622.4(a)(3)(iii).

Authorized statistical reporting agent means:

(1) Any person so designated by the SRD; or

(2) Any person so designated by the head of any Federal or State agency that has entered into an agreement with the Assistant Administrator to collect fishery data.

Automatic reel means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel electrically or hydraulically.

Bandit gear means a rod and reel that remain attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

BRD means bycatch reduction device.

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom. A hook or hooks (usually 6 to 10) are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

Carapace length means the straight-line distance from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax. (See Figure 1 in Appendix C of this part.)

Caribbean means the Caribbean Sea around Puerto Rico and the U.S. Virgin Islands.

Caribbean conch resource means one or more of the following species, or a part thereof:

(1) Atlantic triton's trumpet, *Charonia variegata*.

(2) Cameo helmet, *Cassis madagascarensis*.

(3) Caribbean helmet, *Cassis tuberosa*.

(4) Caribbean vase, *Vasum muricatum*.

(5) Flame helmet, *Cassis flammea*.

(6) Green star shell, *Astrea tuber*.

(7) Hawkwing conch, *Strombus raninus*.

(8) Milk conch, *Strombus costatus*.

(9) Queen conch, *Strombus gigus*.

(10) Roostertail conch, *Strombus gallus*.

(11) True tulip, *Fasciolaria tulipa*.

(12) West Indian fighting conch, *Strombus pugilis*.

(13) Whelk (West Indian top shell), *Cittarium pica*.

Caribbean coral reef resource means one or more of the species, or a part thereof, listed in Table 1 in Appendix A of this part, whether living or dead.

Caribbean prohibited coral means, in the Caribbean; a gorgonian, that is, a Caribbean coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea; a live rock; or a stony coral, that is, a Caribbean coral reef resource of the Class Hydrozoa (fire corals and hydrocorals) or of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals); or a part thereof.

Caribbean reef fish means one or more of the species, or a part thereof, listed in Table 2 in Appendix A of this part.

Caribbean spiny lobster means the species *Panulirus argus*, or a part thereof.

CFMC means the Caribbean Fishery Management Council.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Coastal migratory pelagic fish means one or more of the following species, or a part thereof:

(1) Bluefish, *Pomatomus saltatrix* (Gulf of Mexico only).

(2) Cero, *Scomberomorus regalis*.

(3) Cobia, *Rachycentron canadum*.

(4) Dolphin, *Coryphaena hippurus*

(5) King mackerel, *Scomberomorus cavalla.*

(6) Little tunny, *Euthynnus alletteratus.*

(7) Spanish mackerel, *Scomberomorus maculatus.*

Coral area means marine habitat in the Gulf or South Atlantic EEZ where coral growth abounds, including patch reefs, outer bank reefs, deep water banks, and hard bottoms.

Dealer, in addition to the definition specified in §600.10 of this chapter, means the person who first receives rock shrimp harvested from the EEZ upon transfer ashore.

Drift gillnet, for the purposes of this part, means a gillnet, other than a long gillnet or a run-around gillnet, that is unattached to the ocean bottom, regardless of whether attached to a vessel.

Fish trap means—

(1) In the Caribbean EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish.

(2) In the Gulf EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish, except a trap historically used in the directed fishery for crustaceans (that is, blue crab, stone crab, and spiny lobster).

(3) In the South Atlantic EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking fish, except a sea bass pot, a golden crab trap, or a crustacean trap (that is, a type of trap historically used in the directed fishery for blue crab, stone crab, red crab, jonah crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, red crab, jonah crab, and spiny lobster).

Fork length means the straight-line distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 2 in Appendix C of this part.)

Golden crab means the species *Chaceon fenneri,* or a part thereof.

Golden crab trap means any trap used or possessed in association with a directed fishery for golden crab in the South Atlantic EEZ, including any trap that contains a golden crab in or from the South Atlantic EEZ or any trap on board a vessel that possesses golden crab in or from the South Atlantic EEZ.

GMFMC means the Gulf of Mexico Fishery Management Council.

Gulf means the Gulf of Mexico. The line of demarcation between the Atlantic Ocean and the Gulf of Mexico is specified in §600.105(c) of this chapter.

Gulf reef fish means one or more of the species, or a part thereof, listed in Table 3 in Appendix A of this part.

Gulf and South Atlantic prohibited coral means, in the Gulf and South Atlantic, one or more of the following, or a part thereof:

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals).

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

(3) A seafan, *Gorgonia flabellum* or *G. ventalina.*

(4) Coral in a coral reef, except for allowable octocoral.

(5) Coral in an HAPC, including allowable octocoral.

Handline means a line with attached hook(s) that is tended directly by hand.

HAPC means habitat area of particular concern.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the USCG to carry passengers for hire. A headboat with a commercial vessel permit, as required under §622.4(a)(2), is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(1) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection; or

(2) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the

mouth of the net are attached to sleds, doors, or other devices that spread the net.

Hook-and-line gear means automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Long gillnet means a gillnet that has a float line that is more than 1,000 yd (914 m) in length.

Longline means a line that is deployed horizontally to which gangions and hooks are attached. A longline may be a bottom longline, i.e., designed for use on the bottom, or a pelagic longline, i.e., designed for use off the bottom. The longline hauler may be manually, electrically, or hydraulically operated.

MAFMC means the Mid-Atlantic Fishery Management Council.

Mid-Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter, to the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter.

Migratory group, for king and Spanish mackerel, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King and Spanish mackerel are divided into migratory groups—the Atlantic migratory group and the Gulf migratory group. The boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25′ N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ.

(2) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4′ N. lat., which is a line directly east from the Miami–Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

Off Florida means the waters in the Gulf and South Atlantic from 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary, to 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Off Georgia means the waters in the South Atlantic from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary.

Official sunrise or *official sunset* means the time of sunrise or sunset as determined for the date and location in *The Nautical Almanac,* prepared by the U.S. Naval Observatory.

Off Louisiana, Mississippi, and Alabama means the waters in the Gulf other than off Florida and off Texas.

Off North Carolina means the waters in the South Atlantic from 36°34′55″ N. lat., which is a line directly east from the Virginia/North Carolina boundary, to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters in the South Atlantic from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78′32′32.6″ W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off Texas means the waters in the Gulf west of a rhumb line from 29°32.1′ N. lat., 93°47.7′ W. long. to 26°11.4′ N. lat., 92°53′ W. long., which line is an extension of the boundary between Louisiana and Texas.

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of brown, pink, or white shrimp (penaeid shrimp) is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, that fires a projectile upon contact.

Processor means a person who processes fish or fish products, or parts thereof, for commercial use or consumption.

Purchase means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

Red drum, also called redfish, means *Sciaenops ocellatus,* or a part thereof.

Red snapper means *Lutjanus campechanus,* or a part thereof, one of the Gulf reef fish species.

Regional Administrator (RA), for the purposes of this part, means the Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or a designee.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

Run-around gillnet means a gillnet, other than a long gillnet, that, when used, encloses an area of water.

SAFMC means the South Atlantic Fishery Management Council.

Sale or *sell* means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

Science and Research Director (SRD), for the purposes of this part, means the Science and Research Director, Southeast Fisheries Science Center, NMFS (see Table 1 of §600.502 of this chapter).

Sea bass pot means a trap has six rectangular sides and does not exceed 25 inches (63.5 cm) in height, width, or depth.

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Penaeus aztecus.*

(2) Pink shrimp, *Penaeus duorarum.*

(3) Rock shrimp, *Sicyonia brevirostris.*

(4) Royal red shrimp, *Pleoticus robustus.*

(5) Seabob shrimp, *Xiphopenaeus kroyeri.*

(6) White shrimp, *Penaeus setiferus.*

Shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

SMZ means special management zone.

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in §600.105(b) of this chapter, to the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in §600.105(c) of this chapter.

South Atlantic snapper-grouper means one or more of the species, or a part thereof, listed in Table 4 in Appendix A of this part.

Stab net means a gillnet, other than a long gillnet, or trammel net whose weight line sinks to the bottom and submerges the float line.

Total length (TL), for the purposes of this part, means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side. The mouth of the fish may be closed and/or the tail may be squeezed together to give the greatest overall measurement. (See Figure 2 in Appendix C of this part.)

Toxic chemical means any substance, other than an allowable chemical, that, when introduced into the water, can stun, immobilize, or take marine life.

Trammel net means two or more panels of netting, suspended vertically in the water by a common float line and a common weight line, with one panel having a larger mesh size than the other(s), to entrap fish in a pocket of netting.

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Try net, also called test net, means a net pulled for brief periods by a shrimp

trawler to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses).

Wild live rock means live rock other than aquacultured live rock.

Wreckfish means the species *Polyprion americanus*, or a part thereof, one of the South Atlantic snapper-grouper species.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996; 61 FR 65483, Dec. 13, 1996; 62 FR 18539, Apr. 16, 1997; 63 FR 10565, Mar. 4, 1998; 63 FR 18144, Apr. 14, 1998; 64 FR 59125, Nov. 2, 1999; 65 FR 52957, Aug. 31, 2000]

EFFECTIVE DATE NOTE: At 65 FR 52957, Aug. 31, 2000, § 622.2 was amended in the definition of *Migratory Group* by removing ''Dade'' and adding in its place ''Miami–Dade'', effective Oct. 2, 2000.

§ 622.3 Relation to other laws and regulations.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such Sanctuaries or Parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following National Marine Sanctuaries and National Parks:

(1) Everglades National Park (36 CFR 7.45).

(2) Looe Key National Marine Sanctuary (15 CFR part 937).

(3) Fort Jefferson National Monument (36 CFR 7.27).

(4) Key Largo Coral Reef National Marine Sanctuary (15 CFR part 929).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Gray's Reef National Marine Sanctuary (15 CFR Part 938).

(7) Monitor Marine Sanctuary (15 CFR part 924).

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the Gulf or South Atlantic EEZ must comply with the more restrictive state regulation.

(d) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and 600.740 of this chapter, respectively.

(e) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter.

§ 622.4 Permits and fees.

(a) *Permits required.* To conduct activities in fisheries governed in this part, valid permits, licenses, and endorsements are required as follows:

(1) *Charter vessel/headboat permits.* For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper in or from the EEZ, a charter vessel/headboat permit for coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper, respectively, must have been issued to the vessel and must be on board. A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits.

(2) *Commercial vessel permits, licenses, and endorsements*—(i) *Fish traps in the Gulf.* For a person to possess or use a fish trap in the EEZ in the Gulf of Mexico, a commercial vessel permit for Gulf reef fish with a fish trap endorsement must have been issued to the vessel and must be on board. See paragraph (n) of this section regarding fish trap endorsements.

(ii) *Gillnets for king mackerel in the southern Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone (see § 622.42(c)(1)(i)(A)(*3*)), a commercial vessel permit for king mackerel with a gillnet endorsement must have been issued to the vessel and must be on

board. See paragraph (o) of this section regarding a moratorium on endorsements for the use of gillnets for king mackerel in the southern Florida west coast subzone and restrictions on transferability of king mackerel gillnet endorsements.

(iii) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application. See paragraph (q) of this section regarding a moratorium on commercial vessel permits for king mackerel, transfers of permits during the moratorium, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a moratorium on commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

(vi) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kg) of tilefish on board is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb (90.7 kg) of tilefish on board harvested such tilefish in the EEZ. See §622.18 for limitations on the use, transfer, and renewal of a commercial vessel permit for South Atlantic snapper-grouper.

(vii) *Wreckfish.* For a person aboard a vessel to fish for wreckfish in the South Atlantic EEZ, possess wreckfish in or from the South Atlantic EEZ, offload wreckfish from the South Atlantic EEZ, or sell wreckfish in or from the South Atlantic EEZ, a commercial vessel permit for wreckfish must have been issued to the vessel and must be on board. To obtain a commercial vessel permit for wreckfish, the applicant must be a wreckfish shareholder; and either the shareholder must be the vessel owner or the owner or operator must be an employee, contractor, or agent of the shareholder. (See §622.15 for information on wreckfish shareholders.)

(viii) *South Atlantic rock shrimp.* For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the

South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board.

(ix) *Gulf red snapper.* For a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued to retain red snapper under the trip limits specified in § 622.44(d)(1) or (2), a Class 1 or Class 2 Gulf red snapper license must have been issued to the vessel and must be on board. See paragraph (p) of this section regarding initial issue of red snapper licenses.

(x) *South Atlantic golden crab.* For a person aboard a vessel to fish for golden crab in the South Atlantic EEZ, possess golden crab in or from the South Atlantic EEZ, off-load golden crab from the South Atlantic EEZ, or sell golden crab in or from the South Atlantic EEZ, a commercial vessel permit for golden crab must be issued to the vessel and must be on board. It is a rebuttable presumption that a golden crab on board a vessel in the South Atlantic or off-loaded from a vessel in a port adjoining the South Atlantic was harvested from the South Atlantic EEZ. See § 622.17 for limitations on the use, transfer, and renewal of a commercial vessel permit for golden crab.

(3) *Coral permits*—(i) *Allowable chemical.* For an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida, a Federal allowable chemical permit must have been issued to the individual. Such permit must be available when the permitted activity is being conducted and when such fish or other marine organisms are possessed, through landing ashore.

(ii) *Allowable octocoral.* For an individual to take or possess allowable octocoral in the Gulf or South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

(iii) *Aquacultured live rock.* For a person to take or possess aquacultured live rock in the Gulf or South Atlantic EEZ, a Federal aquacultured live rock permit must have been issued for the specific harvest site. Such permit, or a copy, must be on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site.

(iv) *Prohibited coral.* A Federal permit may be issued to take or possess Gulf and South Atlantic prohibited coral or Caribbean prohibited coral only as scientific research activity, exempted fishing, or exempted educational activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(v) *Florida permits.* Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(A) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(B) Landing allowable octocoral in Florida.

(C) Landing live rock in Florida.

(4) *Dealer permits.* For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, rock shrimp harvested from the South Atlantic EEZ, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, or wreckfish, respectively, must be issued to the dealer. To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Applications for permits.* Application forms for all permits are available from the RA. Completed application forms and all required supporting documents must be submitted to the RA at least 30 days prior to the date on which the applicant desires to have the permit made effective. All vessel permits are mailed to owners, whether the applicant is an owner or an operator.

(1) *Coral permits.* (i) The applicant for a coral permit must be the individual who will be conducting the activity

that requires the permit. In the case of a corporation or partnership that will be conducting live rock aquaculture activity, the applicant must be the principal shareholder or a general partner.

(ii) An applicant must provide the following:

(A) Name, address, telephone number, and other identifying information of the applicant.

(B) Name and address of any affiliated company, institution, or organization.

(C) Information concerning vessels, harvesting gear/methods, or fishing areas, as specified on the application form.

(D) Any other information that may be necessary for the issuance or administration of the permit.

(E) If applying for an aquacultured live rock permit, identification of each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, specification of the port of landing of aquacultured live rock, and a site evaluation report prepared pursuant to generally accepted industry standards that—

(*1*) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(*2*) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(*3*) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(*4*) Describes the naturally occurring bottom habitat at the site; and

(*5*) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

(2) *Dealer permits.* (i) The application for a dealer permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner).

(ii) An applicant must provide the following:

(A) A copy of each state wholesaler's license held by the dealer.

(B) Name, address, telephone number, date the business was formed, and other identifying information of the business.

(C) The address of each physical facility at a fixed location where the business receives fish.

(D) Name, address, telephone number, other identifying information, and official capacity in the business of the applicant.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(3) *Vessel permits.* (i) The application for a commercial vessel permit, other than for wreckfish, or for a charter vessel/headboat permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) or operator of the vessel. A commercial vessel permit that is issued based on the earned income qualification of an operator is valid only when that person is the operator of the vessel. The applicant for a commercial vessel permit for wreckfish must be a wreckfish shareholder.

(ii) An applicant must provide the following:

(A) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner and of the applicant, if other than the owner.

(D) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(F) If applying for a commercial vessel permit, documentation, as specified in the instructions accompanying each application form, showing that applicable eligibility requirements of paragraph (a)(2) of this section have been met.

(G) If a fish trap or sea bass pot will be used, the number, dimensions, and

estimated cubic volume of the traps/pots that will be used and the applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(c) *Change in application information.* The owner or operator of a vessel with a permit, a person with a coral permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each application for a permit, license, or endorsement submitted under this section, for each request for transfer or replacement of such permit, license, or endorsement, and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i)(B). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the 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, request for transfer or replacement, or request for fish trap/sea bass pot identification tags.

(e) *Initial issuance.* (1) The RA will issue an initial permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the vessel or dealership is sold.

(g) *Transfer.* A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in § 622.17(c) for a commercial vessel permit for golden crab, or in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper. A person who acquires a vessel or dealership who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(h) *Renewal.* Although a permit required by this section is issued on an annual basis, an application for permit renewal is required only every 2 years. In the interim years, a permit is renewed automatically (without application) for a vessel owner or dealer who has met the specific requirements for the requested permit, who has submitted all reports required under the Magnuson Act, and who is not subject to a permit sanction or denial under paragraph (j) of this section. An owner or dealer whose permit is expiring will be mailed a notification by the RA approximately 2 months prior to expiration of the current permit. That notification will advise the status of the renewal of the permit. That is, the notification will advise that the renewed permit will be issued without further action by the owner or dealer, that the permit is not eligible for automatic renewal, or that a new application is required. A notification that a permit is not eligible for automatic renewal will specify the reasons and will provide an opportunity for correction of any deficiencies. A notification that a new application is required will include a preprinted renewal application. An automatically renewed permit will be mailed by the RA approximately 1 month prior to expiration of the old permit. A vessel owner or dealer who

does not receive a notification of status of renewal of a permit by 45 days prior to expiration of the current permit must contact the RA.

(i) *Display*. A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

(j) *Sanctions and denials*. A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(k) *Alteration*. A permit, license, or endorsement that is altered, erased, or mutilated is invalid.

(l) *Replacement*. A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application.

(m) *Moratorium on commercial vessel permits for Gulf reef fish*. The provisions of this paragraph (m) are applicable through December 31, 2005.

(1) No applications for additional commercial vessel permits for Gulf reef fish will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (m)(2) through (5) of this section, and are subject to the requirement for timely renewal in paragraph (m)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer the permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for Gulf reef fish for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may transfer the permit to the income qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within 1 year of the expiration date of the permit.

(n) *Endorsements for fish traps in the Gulf*. The provisions of this paragraph (n) are applicable through February 7, 2007. After February 7, 2007, no fish trap endorsements are valid.

(1) Only those fish trap endorsements that are valid on February 7, 1997, may be renewed. Such endorsements are subject to the restrictions on transfer in paragraphs (n)(2) and (3) of this section and are subject to the requirement for timely renewal in paragraph (n)(5) of this section.

(2) Through February 7, 1999, a fish trap endorsement may be transferred only to a vessel that has a commercial permit for reef fish.

(3) After February 7, 1999, a fish trap endorsement is not transferable except as follows:

(i) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity.

(ii) A fish trap endorsement is transferable upon a change of ownership of a permitted vessel with such endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(iii) When a change of ownership of a vessel with a fish trap endorsement is directly related to the disability or death of the owner, the RA may issue such endorsement, temporarily or permanently, with the commercial vessel permit for Gulf reef fish that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Paragraphs (m)(3) and (4) of this section apply for the transfer of a commercial vessel permit for Gulf reef fish upon disability or death of an owner.)

(iv) A fish trap endorsement may be transferred to a vessel with a commercial vessel permit for Gulf reef fish whose owner has a record of landings of reef fish from fish traps in the Gulf EEZ, as reported on fishing vessel logbooks received by the SRD, from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for the vessel with the reported landings.

(4) The owner of a vessel that is to receive a transferred endorsement must return the originals of the endorsed commercial vessel permit for Gulf reef fish and the unendorsed permit to the RA with an application for a fish trap endorsement for his or her vessel.

(5) A fish trap endorsement that is not renewed or that is revoked will not be reissued. Such endorsement is considered to be not renewed when an application for renewal is not received by the RA within 1 year of the expiration date of the permit.

(o) *Moratorium on endorsements for the use of gillnets for king mackerel in the southern Florida west coast subzone.* (1) An initial king mackerel gillnet endorsement will be issued only if—

(i) The vessel owner was the owner of a vessel with a commercial mackerel permit with a gillnet endorsement on or before October 16, 1995; and

(ii) The vessel owner was the owner of a vessel that had gillnet landings of Gulf migratory group king mackerel in one of the two fishing years, July 1, 1995, through June 30, 1996, or July 1, 1996, through June 30, 1997. Such landings must have been documented by NMFS or by the Florida Department of Environmental Protection trip ticket system as of December 31, 1997. Only landings when a vessel had a valid commercial permit for king mackerel with a gillnet endorsement and only landings that were harvested, landed, and sold in compliance with state and Federal regulations may be used to establish eligibility.

(2) Paragraphs (o)(1)(i) and (o)(1)(ii) of this section notwithstanding, the owner of a vessel that received a commercial king mackerel permit through transfer, between March 4, 1998, and March 28, 2000, from a vessel that met the eligibility requirements in paragraphs (o)(1)(i) and (o)(1)(ii) also qualifies for an initial king mackerel gillnet endorsement.

(3) To obtain an initial king mackerel gillnet endorsement under the moratorium, an owner or operator of a vessel that does not have a king mackerel gillnet endorsement on March 28, 2000 must submit an application to the RA, postmarked or hand delivered not later than June 26, 2000. Except for applications for renewals of king mackerel gillnet endorsements, no applications for king mackerel gillnet endorsements will be accepted after June 26, 2000. Application forms are available from the RA.

(4) The RA will not issue an owner more initial king mackerel gillnet endorsements under the moratorium than the number of vessels with king mackerel gillnet endorsements that the owner owned simultaneously on or before October 16, 1995.

(5) An owner of a vessel with a king mackerel gillnet endorsement issued under this moratorium may transfer that endorsement upon a change of ownership of a permitted vessel with such endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such endorsement also may be transferred to another vessel owned by the same entity.

(6) A king mackerel gillnet endorsement that is not renewed or that is revoked will not be reissued. An endorsement is considered to be not renewed when an application for renewal is not received by the RA within 1 year after the expiration date of the permit that includes the endorsement.

(p) *Gulf red snapper licenses*—(1) *Class 1 licenses*. To be eligible for the 2,000–lb (907–kg) trip limit for Gulf red snapper specified in § 622.44(d)(1), a vessel must have been issued both a valid commercial vessel permit for Gulf reef fish and a valid Class 1 Gulf red snapper license, and such permit and license must be on board.

(2) *Class 2 licenses*. To be eligible for the 200–lb (91–kg) trip limit for Gulf red snapper specified in § 622.44(d)(2), a vessel must have been issued both a valid commercial vessel permit for Gulf reef fish and a valid Class 2 Gulf red snapper license, and such permit and license must be on board.

(3) *Operator restriction*. An initial Gulf red snapper license that is issued for a vessel based on the qualification of an operator or historical captain is valid only when that operator or historical captain is the operator of the vessel. When applicable, this operator restriction is shown on the license.

(4) *Transfer of Gulf red snapper licenses*. A red snapper license may be transferred independently of a commercial vessel permit for Gulf reef fish. To request the transfer of a red snapper license, complete the transfer information on the reverse of the license and return it to the RA.

(5) *Initial issue of Gulf red snapper licenses*—(i) *Class 1 licenses*. (A) An initial Class 1 license will be issued for the vessel specified by the holder of a valid red snapper endorsement on March 1, 1997, and to a historical captain. In the event of death or disability of such holder between March 1, 1997, and the date Class 1 licenses are issued, a Class 1 license will be issued for the vessel specified by the person to whom the red snapper endorsement was transferred.

(B) Status as a historical captain is based on information collected under Amendment 9 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) (59 FR 39301, August 2, 1994). A historical captain is an operator who—

(*1*) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who was paid from the share under his or her control;

(*2*) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992;

(*3*) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993; and

(*4*) Landed red snapper prior to November 7, 1989.

(ii) *Class 2 licenses*. (A) An initial Class 2 license will be issued for the vessel specified by an owner or operator whose income qualified for a commercial vessel permit for reef fish that was valid on March 1, 1997, and such owner or operator was the person whose earned income qualified for a commercial vessel permit for reef fish that had a landing of red snapper during the period from January 1, 1990, through February 28, 1997.

(B) For the purpose of paragraph (p)(5)(ii)(A) of this section, landings of red snapper are as recorded in the information collected under Amendment 9 to the FMP (59 FR 39301, August 2, 1994) for the period 1990 through 1992 and in fishing vessel logbooks, as required under § 622.5(a)(1)(ii), received by the SRD not later than March 31, 1997,

for the period from January 1, 1993, through February 28, 1997.

(C) A vessel's red snapper landings record during the period from January 1, 1990, through February 28, 1997, is retained by the owner at the time of the landings if the vessel's permit was transferred to another vessel owned by him or her. When a vessel has had a change of ownership and concurrent transfer of its permit, the vessel's red snapper landings record is credited to the owner of that vessel on March 1, 1997, unless there is a legally binding agreement under which a previous owner retained the landings record. An owner who claims such retention of a landings record must submit a copy of the agreement to the RA postmarked or hand delivered not later than January 30, 1998. However, an owner who submits a copy of such agreement after January 6, 1998, is not assured that a red snapper license will be issued before the opening of the commercial fishery for red snapper on February 1, 1998.

(6) *Implementation procedures*—(i) *Initial notification*. The RA will notify each owner of a vessel that had a valid permit for Gulf reef fish on March 1, 1997, each operator whose earned income qualified for a valid permit on that date, and each potential historical captain of his or her eligibility for a Class 1 or Class 2 red snapper license. Initial determinations of eligibility will be based on NMFS' records of red snapper endorsements, red snapper landings during the period from January 1, 1990, through February 28, 1997, and applications for historical captain status under Amendment 9 to the FMP (59 FR 39301, August 2, 1994). An owner, operator, or potential historical captain who concurs with NMFS' initial determination of eligibility need take no further action. Each owner, operator, and historical captain who is initially determined to be eligible will be issued an appropriate license not later than January 23, 1998.

(ii) *Reconsideration*. (A) An owner, operator, or potential historical captain who does not concur with NMFS' initial determination of eligibility for historical captain status or for a Class 2 red snapper license may request reconsideration of that initial determination by the RA.

(B) A written request for reconsideration must be submitted to the RA postmarked or hand delivered not later than February 10, 1998, and must provide written documentation supporting the basis for reconsideration. However, an owner who submits such request after January 13, 1998, is not assured that a red snapper license will be issued before the opening of the commercial fishery for red snapper on February 1, 1998. Upon request by the owner, operator, or potential historical captain, the RA will forward the initial determination, the request for reconsideration, and pertinent records to a committee consisting of the principal state officials who are members of the GMFMC, or their designees. An owner, operator, or potential historical captain may request to make a personal appearance before the committee in his or her request for reconsideration. If an owner, operator, or potential historical captain requests that his or her request be forwarded to the committee, such a request constitutes the applicant's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) for the RA to make available to the committee members such confidential catch and other records as are pertinent to the matter under reconsideration.

(C) Members of the committee will provide their individual recommendations for each application for reconsideration referred to the committee to the RA. The committee may only deliberate whether the eligibility criteria specified in paragraph (p)(5) of this section were applied correctly in the applicant's case, based solely on the available record, including documentation submitted by the applicant. Neither the committee nor the RA may consider whether a person should have been eligible for historical captain status or a Class 2 license because of hardship or other factors. The RA will make a final decision based on the initial eligibility criteria in paragraph (p)(5) of this section and the available record, including documentation submitted by the applicant, and, if the request is considered by the committee,

the recommendations and comments from each member of the committee. The RA will notify the applicant of the decision and the reason therefore, in writing, within 15 days of receiving the recommendations of the committee members. If the application is not considered by the committee, the RA will provide such notification within 15 days of the RA's receipt of the request for reconsideration. The RA's decision will constitute the final administrative action by NMFS on an application for reconsideration.

(q) Moratorium on commercial vessel permits for king mackerel. This paragraph (q) is effective through October 15, 2005.

(1) No applications for additional commercial vessel permits for king mackerel will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (q)(2) through (q)(5) of this section, and are subject to the requirement for timely renewal in paragraph (q)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this moratorium to another vessel owned by the same entity.

(3) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under the moratorium may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within 1 year of the permit's expiration date.

[61 FR 34937, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept 9, 1996; 61 FR 48414, Sept. 13, 1996; 62 FR 13986, Mar. 25, 1997; 62 FR 67721, 67722, Dec. 30, 1997; 63 FR 10565, 10569, Mar. 4, 1998; 63 FR 38301, July 16, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 59126, Nov. 2, 1999; 65 FR 16339, Mar. 28, 2000; 65 FR 41017, July 3, 2000; 65 FR 52956, Aug. 31, 2000]

EFFECTIVE DATE NOTE: At 65 FR 52956, Aug. 31, 2000, § 622.4 was amended by revising the last two sentences of paragraph (a)(2)(iii), the last sentence of (a)(2)(iv), and paragraph (q), effective Oct. 2, 2000. For the convenience of the user, the superseded text follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(iii) * * * To obtain or renew a commercial vessel permit for king mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application. See paragraph (q) of this section regarding a

moratorium on commercial vessel permits for king mackerel, initial permits under the moratorium, transfers of permits during the moratorium, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) * * * To obtain or renew a commercial vessel permit for Spanish mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

* * * * *

(q) *Moratorium on commercial vessel permits for king mackerel.* This paragraph (q) is effective through October 15, 2000.

(1) Effective March 4, 1998, an initial commercial vessel permit for king mackerel will be issued only if the vessel owner was the owner of a vessel with a commercial vessel permit for king mackerel on or before October 16, 1995. A king mackerel permit for a vessel whose owner does not meet this moratorium criterion may be renewed only through April 30, 1999.

(2) To obtain a commercial vessel permit for king mackerel under the moratorium, an owner or operator of a vessel that does not have a valid king mackerel permit on March 4, 1998, must submit an application to the RA postmarked or hand delivered not later than June 2, 1998. Other than applications for renewals of commercial vessel permits for king mackerel, no applications for commercial vessel permits for king mackerel will be accepted after June 2, 1998. Application forms are available from the RA.

(3) An owner will not be issued initial commercial vessel permits for king mackerel under the moratorium in numbers exceeding the number of vessels permitted in the king mackerel fishery that he/she owned simultaneously on or before October 16, 1995. If a vessel with a commercial vessel permit for king mackerel on or before October 16, 1995, has been sold since that date, the owner on or before that date retains the right to the commercial vessel permit for king mackerel unless there is a written agreement that such right transfers to the new owner.

(4) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this moratorium to another vessel owned by the same entity.

(5) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under the moratorium may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full calendar year after the permit transfer takes place.

(6) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(7) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(8) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within 1 year of the permit's expiration date.

§ 622.5 Recordkeeping and reporting.

Participants in fisheries governed in this part are required to keep records and report as follows.

(a) *Commercial vessel owners and operators*—(1) *Requirements by species*—(i) *Coastal migratory pelagic fish.* The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv), who is selected to report by the SRD, must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(ii) *Gulf reef fish.* The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under §622.4(a)(2)(v), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(A) *Fish traps.* In addition to the other reporting requirements in paragraph (a)(1)(ii) of this section, the owner or operator of a vessel for which a fish trap endorsement has been issued, as required under §622.4(a)(2)(i), must comply with the following requirements.

(*1*) *Inspection.* The RA will establish a 1-month period for mandatory inspection of all fish trap gear, permits, and vessels. The RA will provide written notification of the inspection period to each owner of a vessel for which a fish trap endorsement has been issued as required under §622.4(a)(2)(i). Each such owner or operator must contact the Special Agent-in-Charge, NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL (SAC) or his designee by telephone (727–570–5344) to schedule an inspection during the 1-month period. Requests for inspection must be made between 8:00 a.m. and 4:30 p.m. Monday through Friday and must be made at least 72 hours in advance of the desired inspection date. Inspections will be conducted Monday through Friday between 8:00 a.m. and 4:30 p.m. only. On the inspection date, the owner or operator must make all fish trap gear with attached trap tags and buoys and all applicable permits available for inspection on land. Vessels must also be made available for inspection as directed by the SAC or his designee. Upon completion of the inspection and a determination that all fish trap gear, permits, and vessels are in compliance, an owner or operator may resume fishing with the lawful gear. However, an owner or operator who fails to comply with the inspection requirements during the 1-month inspection period or during any other random inspection may not use or possess a fish trap in the Gulf EEZ until the required inspection or reinspection, as directed by the SAC, has been completed and all fish trap gear, permits, and vessels are determined to be in compliance with all applicable regulations.

(*2*) *Trip reports.* For each fishing trip on which a fish trap will be used or possessed, an owner or operator of a vessel for which a fish trap endorsement has been issued, as required under §622.4(a)(2)(i), must submit a trip initiation report and a trip termination report to the SAC or his designee, by telephone, using the following 24–hour toll-free number—800–305–0697.

(*i*) *Trip initiation report.* The trip initiation report must be submitted before beginning the trip and must include: vessel name; official number; number of traps to be deployed; sequence of trap tag numbers; date, time, and point of departure; and intended time and date of trip termination.

(*ii*) *Trip termination report.* The trip termination report must be submitted immediately upon returning to port and prior to any offloading of catch or fish traps. The trip termination report must include: vessel name; official number; name and address of dealer where catch will be offloaded and sold; the time offloading will begin; notification of any lost traps; and notification of any traps left deployed for any reason.

(B) [Reserved]

(iii) *Gulf shrimp.* The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(iv) *South Atlantic snapper-grouper.* (A) The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under §622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form

available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(C) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(v) *South Atlantic golden crab.* The owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under § 622.4(a)(2)(x), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD.

(2) *Reporting deadlines.* (i) Completed fishing records required by paragraphs (a)(1)(i), (ii), and (iv) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(ii) Reporting forms required in paragraph (a)(1)(v) of this section must be submitted to the SRD postmarked not later than 30 days after sale of the golden crab offloaded from a trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Coastal migratory pelagic fish, reef fish, and snapper-grouper.* The owner or operator of a vessel for which a charter vessel/headboat permit for coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, or snapper-grouper in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers*—(1) *Coastal migratory pelagic fish.* (i) A person who purchases coastal migratory pelagic fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters who is selected to report by the SRD must submit information on forms provided by the SRD. This information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no coastal migratory pelagic fish were received during a calendar month, a report so stating must be submitted on one of the forms, in accordance with the instructions on the form, and must be postmarked not later than 5 days after the end of the month. The information to be reported is as follows:

(A) Dealer's or processor's name and address.

(B) County where fish were landed.

(C) Total poundage of each species received during that month, or other requested interval.

(D) Average monthly price paid for each species.

(E) Proportion of total poundage landed by each gear type.

(ii) *Alternate SRD.* For the purposes of paragraph (c)(1)(i) of this section, in the states from New York through Virginia, or in the waters off those states, ''SRD'' means the Science and Research Director, Northeast Fisheries Science Center, NMFS (see Table 1 of §600.502 of this chapter), or a designee.

(2) *Gulf red drum.* A dealers or processor who purchases red drum harvested from the Gulf who is selected to report by the SRD must report to the SRD such information as the SRD may request and in the form and manner as the SRD may require. The information required to be submitted must include, but is not limited to, the following:

(i) Dealer's or processor's name and address.

(ii) State and county where red drum were landed.

(iii) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

(3) *Gulf reef fish.* A person who purchases Gulf reef fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters must maintain records and submit information as follows:

(i) A dealer must maintain at his/her principal place of business a record of Gulf reef fish that he/she receives. The record must contain the name of each fishing vessel from which reef fish were received and the date, species, and quantity of each receipt. A dealer must retain such record for at least 1 year after receipt date and must provide such record for inspection upon the request of an authorized officer or the SRD.

(ii) When requested by the SRD, a dealer must provide information from his/her record of Gulf reef fish received the total poundage of each species received during the month, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type. This information must be provided on forms available from the SRD and must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no reef fish were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month.

(iii) The operator of a car or truck that is used to pick up from a fishing vessel reef fish harvested from the Gulf must maintain a record containing the name of each fishing vessel from which reef fish on the car or truck have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

(4) *Gulf shrimp.* A person who purchases shrimp from a vessel, or person, that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information when requested by the SRD:

(i) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel.

(ii) Amount of shrimp received by species and size category for each receipt.

(iii) Exvessel value, by species and size category, for each receipt.

(5) *South Atlantic snapper-grouper.* (i) A person who purchases South Atlantic snapper-grouper that were harvested from the EEZ or from adjoining state waters and who is selected to report by the SRD and a dealer who has been issued a dealer permit for wreckfish, as required under §622.4(a)(4), must provide information on receipts of South Atlantic snapper-grouper and prices paid, by species, on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no South Atlantic snapper-grouper were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later

than 5 days after the end of the month. However, during complete months encompassed by the wreckfish spawning-season closure (that is, February and March), a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

(ii) A dealer reporting South Atlantic snapper-grouper other than wreckfish may submit the information required in paragraph (c)(5)(i) of this section via facsimile (fax).

(iii) A dealer who has been issued a dealer permit for wreckfish, as required under §622.4(a)(4), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(6) *South Atlantic golden crab.* A dealer who receives from a fishing vessel golden crab harvested from the South Atlantic EEZ and who is selected by the SRD must provide information on receipts of, and prices paid for, South Atlantic golden crab to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD.

(7) *South Atlantic rock shrimp.* (i) A dealer who has been issued a permit for rock shrimp, as required under §622.4(a)(4), and who is selected by the SRD must provide information on receipts of rock shrimp and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) On demand, a dealer who has been issued a dealer permit for rock shrimp, as required under §622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of rock shrimp.

(d) *Individuals with coral or live rock permits.* (1) An individual with a Federal allowable octocoral permit must submit a report of harvest to the SRD. Specific reporting requirements will be provided with the permit.

(2) A person with a Federal aquacultured live rock permit must report to the RA each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(i) Permit number of site and date of deposit.

(ii) Geological origin of material deposited.

(iii) Amount of material deposited.

(iv) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(3) A person who takes aquacultured live rock must submit a report of harvest to the RA. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

(e) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or parts thereof available for inspection by the SRD or an authorized officer upon request.

(f) *Commercial vessel, charter vessel, and headboat inventory.* The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under paragraph (a) or (b) of this section must provide the following information when interviewed by the SRD:

(1) Name and official number of vessel and permit number, if applicable.

(2) Length and tonnage.

(3) Current home port.

(4) Fishing areas.

(5) Ports where fish were offloaded during the last year.

(6) Type and quantity of gear.

(7) Number of full- and part-time fishermen or crew members.

[61 FR 34940, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 59126, Nov. 2, 1999; 64 FR 68935, Dec. 9, 1999]

§ 622.6 Vessel and gear identification.

(a) *Vessel identification*—(1) *Applicability*—(i) *Official number.* A vessel for which a permit has been issued under

§622.4, and a vessel that fishes for or possesses shrimp in the Gulf EEZ, must display its official number—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(C) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(ii) *Official number and color code.* The following vessels must display their official number as specified in paragraph (a)(1)(i) of this section and, in addition, must display their assigned color code: A vessel for which a fish trap endorsement has been issued, as required under §622.4(a)(2)(i); a vessel for which a permit has been issued to fish with a sea bass pot, as required under §622.4(a)(2)(vi); a vessel in the commercial Caribbean reef fish fishery fishing with traps; and a vessel in the Caribbean spiny lobster fishery. Color codes required for the Caribbean reef fish fishery and Caribbean spiny lobster fishery are assigned by Puerto Rico or the U.S. Virgin Islands, whichever is applicable; color codes required in all other fisheries are assigned by the RA. The color code must be displayed—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In the form of a circle permanently affixed to or painted on the vessel.

(C) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(2) *Duties of operator.* The operator of a vessel specified in paragraph (a)(1) of this section must keep the official number and the color code, if applicable, clearly legible and in good repair and must ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code, if applicable, from an enforcement vessel or aircraft.

(b) *Gear identification*—(1) *Traps/pots and associated buoys*—(i) *Traps or pots*—(A) *Caribbean EEZ.* A fish trap or spiny lobster trap used or possessed in the Caribbean EEZ must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified.

(B) *Gulf and South Atlantic EEZ.* A fish trap used or possessed in the Gulf EEZ and a sea bass pot used or possessed in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), or a fish trap or sea bass pot on board a vessel with a commercial permit for Gulf reef fish or South Atlantic snapper-grouper, must have a valid identification tag issued by the RA attached. A golden crab trap used or possessed in the South Atlantic EEZ or on board a vessel with a commercial permit for golden crab must have the commercial vessel permit number permanently affixed so as to be easily distinguished, located, and identified; an identification tag issued by the RA may be used for this purpose but is not required.

(ii) *Associated buoys.* A buoy that is attached to a trap or pot must display the official number and assigned color code so as to be easily distinguished, located, and identified as follows:

(A) *Caribbean EEZ.* Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(B) *Gulf and South Atlantic EEZ.* Each buoy must display the official number and color code assigned by the RA. In the Gulf EEZ, a buoy must be attached to each trap, or each end trap if traps are connected by a line. In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the official number and color

code. However, no color code is required on a buoy attached to a golden crab trap.

(iii) *Presumption of ownership.* A Caribbean spiny lobster trap, a fish trap, a golden crab trap, or a sea bass pot in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps and pots that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(iv) *Unmarked traps, pots, or buoys.* An unmarked Caribbean spiny lobster trap, a fish trap, a golden crab trap, a sea bass pot, or a buoy deployed in the EEZ where such trap, pot, or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(2) *Gillnet buoys.* On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4' N. lat., which is a line directly east from the Miami–Dade/Monroe County, FL, boundary, the float line of each gillnet possessed, including any net in use, must have a maximum of nine distinctive floats, i.e., different from the usual net buoys, spaced uniformly at a distance of 100 yd (91.4 m) or less. Each such distinctive float must display the official number of the vessel.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43957, Aug. 27, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 59126, Nov. 2, 1999; 65 FR 52957, Aug. 31, 2000]

EFFECTIVE DATE NOTE: At 65 FR 52957, Aug. 31, 2000, §622.6 was amended in paragraph (b)(2) by removing the word ''Dade'' and adding in its place ''Miami–Dade'', effective Oct. 2, 2000.

§ 622.7 Prohibitions.

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

(a) Engage in an activity for which a valid Federal permit, license, or endorsement is required under §622.4 without such permit, license, or endorsement.

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in §622.4(b), (g), (p), or (q), or in §622.18.

(c) Fail to display a permit, license, or endorsement, as specified in §622.4(i).

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in §622.5(a) through (f).

(e) Fail to make a fish, or parts thereof, available for inspection, as specified in §622.5(e).

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in §622.6 (a) and (b).

(g) Fail to comply with any requirement or restriction regarding ITQ coupons, as specified in §622.15(c)(3), (c)(5), (c)(6), or (c)(7).

(h) Possess wreckfish as specified in §622.15(c)(4), receive wreckfish except as specified in §622.15(c)(7), or offload a wreckfish except as specified in §622.15 (d)(3) and (d)(4).

(i) Transfer—

(1) A wreckfish, as specified in §622.15(d)(1);

(2) A limited-harvest species, as specified in §622.32(c) introductory text;

(3) A species/species group subject to a bag limit, as specified §622.39(a)(1);

(4) South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in §622.41(d)(2)(iii); or

(5) A species subject to a commercial trip limit, as specified in §622.44.

(j) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in §622.31.

(k) Fish for, harvest, or possess a prohibited species, or a limited-harvest species in excess of its limitation, sell or purchase such species, fail to comply with release requirements, or molest or strip eggs from a Caribbean spiny lobster, as specified in §622.32.

(l) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and

restrictions on use of an anchor or grapple, as specified in §622.33, §622.34, or §622.35, or as may be specified under §622.46 (b) or (c).

(m) Harvest, possess, offload, sell, or purchase fish in excess of the seasonal harvest limitations, as specified in §622.36.

(n) Except as allowed under §622.37(c)(2) and (3) for king and Spanish mackerel, possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in §622.37.

(o) Fail to maintain a fish intact through offloading ashore, as specified in §622.38.

(p) Exceed a bag or possession limit, as specified in §622.39.

(q) Fail to comply with the limitations on traps and pots, including but not limited to: Tending requirements, constructions requirements, and area specific restrictions, as specified in §622.40.

(r) Fail to comply with the species-specific limitations, as specified in §622.41.

(s) Fail to comply with the restrictions that apply after closure of a fishery, as specified in §622.43.

(t) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in §622.44.

(u) Fail to comply with the restrictions on sale/purchase, as specified in §622.45.

(v) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in §622.46(a).

(w) Fail to comply with the requirements for observer coverage as specified in §622.10.

(x) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(y) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

(z) Fish for or possess golden crab in or from a designated fishing zone of the South Atlantic EEZ other than the zone for which the vessel is permitted, as specified in §622.17(b).

(aa) Falsify information submitted regarding an application for testing a BRD, testing of a BRD, or the results of such testing, as specified in §622.41(g)(3)(i) or (h)(3).

(bb) [Reserved]

[61 FR 34934, July 3, 1996, as amended at 61 FR 43957, Aug. 27, 1996; 61 FR 48415, Sept. 13, 1996; 62 FR 67722, Dec. 30, 1997; 63 FR 38301, July 16, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 37693, July 13, 1999; 64 FR 43941, Aug. 12, 1999; 64 FR 68935, Dec. 9, 1999]

§622.8 At-sea observer coverage.

(a) If a vessel's trip is selected by the SRD for observer coverage, the owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under §622.4(a)(2)(x), must carry a NMFS-approved observer.

(b) When notified in writing by the SRD that his or her vessel has been selected to carry an NMFS-approved observer, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) An owner or operator of a vessel on which a NMFS approved observer is embarked must:

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

(2) Allow the 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 observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the 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 golden crab.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with

the catch and distribution of golden crab for that trip.

[61 FR 43957, Aug. 27, 1996, as amended at 63 FR 57590, Oct. 28, 1998]

Subpart B—Effort Limitations

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

The provisions of this section apply to wreckfish in or from the South Atlantic EEZ.

(a) *Percentage shares.* (1) In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish have been assigned. Each person has been notified by the RA of his or her percentage share and shareholder certificate number.

(2) All or a portion of a person's percentage shares may be transferred to another person. Transfer of shares must be reported on a form available from the RA. The RA will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RA. The confirmation date will normally be not later than 3 working days after receipt of a properly completed transfer form. A fee is charged for each transfer of shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(b) *Lists of wreckfish shareholders and permitted vessels.* Annually, on or about March 1, the RA will provide each wreckfish shareholder with a list of all wreckfish shareholders and their percentage shares, reflecting share transactions on forms received through February 15. Annually by April 15, the RA will provide each dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), with a list of vessels for which wreckfish permits have been issued, as required under § 622.4(a)(2)(vii). Annually, by April 15, the RA will provide each wreckfish shareholder with a list of dealers who have been issued dealer permits for wreckfish. From April 16 through January 14, updated lists will be provided when required. Updated lists may be obtained at other times or by a person who is not a wreckfish shareholder or wreckfish dealer permit holder by written request to the RA.

(c) *ITQs.* (1) Annually, as soon after March 1 as the TAC for wreckfish for the fishing year that commences April 16 is known, the RA will calculate each wreckfish shareholder's ITQ. Each ITQ is the product of the wreckfish TAC, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each wreckfish shareholder's percentage share, reflecting share transactions reported on forms received by the RA through February 15. Thus, the ITQs will be in terms of eviscerated weight of wreckfish.

(2) The RA will provide each wreckfish shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred from one wreckfish shareholder to another by completing the sale endorsement thereon (that is, the signature and shareholder certificate number of the buyer). An ITQ coupon may be possessed only by the shareholder to whom it has been issued, or by the shareholder's employee, contractor, or agent, unless the ITQ coupon has been transferred to another shareholder. An ITQ coupon that has been transferred to another shareholder may be possessed only by the shareholder whose signature appears on the coupon as the buyer, or by the shareholder's employee, contractor, or agent, and with all required sale endorsements properly completed.

(4) Wreckfish may not be possessed on board a fishing vessel—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel;

(ii) That does not have on board a commercial vessel permit for

wreckfish, as required under § 622.4(a)(2)(vii); or

(iii) That does not have on board logbook forms for that fishing trip, as required under § 622.5(a)(1)(iv)(B).

(5) Prior to termination of a trip, a signature and date signed must be affixed in ink to the ''Fisherman'' part of ITQ coupons in denominations equal to the eviscerated weight of the wreckfish on board. The ''Fisherman'' part of each such coupon must be separated from the coupon and submitted with the logbook forms required by § 622.5(a)(1)(iv)(B) for that fishing trip.

(6) The ''Fish House'' part of each such coupon must be given to the dealer to whom the wreckfish are transferred in amounts totaling the eviscerated weight of the wreckfish transferred to that dealer. A wreckfish may be transferred only to a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4).

(7) A dealer may receive a wreckfish only from a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii). A dealer must receive the ''Fish House'' part of ITQ coupons in amounts totaling the eviscerated weight of the wreckfish received; enter the permit number of the vessel from which the wreckfish were received, enter the date the wreckfish were received, enter the dealer's permit number, and sign each such ''Fish House'' part; and submit all such parts with the dealer reports required by § 622.5(c)(5)(i).

(8) An owner or operator of a vessel and a dealer must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(d) *Wreckfish limitations.* (1) A wreckfish taken in the South Atlantic EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the South Atlantic EEZ.

(2) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the South Atlantic EEZ or in a South Atlantic coastal state will be presumed to have been harvested from the South Atlantic EEZ unless accompanied by documentation that it was harvested from other than the South Atlantic EEZ.

(3) A wreckfish may be offloaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), the wreckfish shareholder or the vessel operator must advise the NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (1–800–853–1964), of the location not less than 24 hours prior to offloading.

[61 FR 34934, July 3, 1996, as amended at 64 FR 59126, Nov. 2, 1999]

§ 622.16 Red snapper individual transferable quota (ITQ) system.

The ITQ system established by this section will remain in effect through March 31, 2000, during which time NMFS and the GMFMC will evaluate the effectiveness of the system. Based on the evaluation, the system may be modified, extended, or terminated.

(a) *Percentage shares.* (1) Initial percentage shares of the annual quota of red snapper are assigned to persons in accordance with the procedure specified in Amendment 8 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) and in paragraphs (c)(1) through (c)(4) of this section. Each person is notified by the RD of his or her initial percentage shares. If additional shares become available to NMFS, such as by forfeiture pursuant to subpart F of 15 CFR part 904 for rule violations, such shares will be proportionately reissued to shareholders based on their shares as of November 1, after the additional shares become available. If NMFS is required to issue additional shares, such as may be required in the resolution of disputes, existing shares will be proportionately reduced. This reduction of shares will be based on shares as of November 1 after the required addition of shares.

(2) All or a portion of a person's percentage shares may be transferred to another person who is a U.S. citizen or permanent resident alien. (See paragraph (c)(5) of this section for restrictions on the transfer of shares in the initial months under the ITQ system.) Transfer of shares must be reported on

a form available from the RD. The RD will confirm, in writing, the registration of each transfer. The effective date of each transfer is the confirmation date provided by the RD. The confirmation of registration date will normally be not later than 3 working days after receipt of a properly completed transfer form. However, reports of share transfers received by the RD from November 1 through December 31 will not be recorded or confirmed until after January 1. A fee is charged for each transfer of percentage shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(3) On or about January 1 each year, the RD will provide each red snapper shareholder with a list of all red snapper shareholders and their percentage shares, reflecting share transfers as indicated on properly completed transfer forms received through October 31. Updated lists may be obtained at other times, and by persons who are not red snapper shareholders, by written request to the RD.

(b) *ITQs.* (1) Annually, as soon after November 15 as the following year's red snapper quota is established, the RD will calculate each red snapper shareholder's ITQ in terms of eviscerated weight. Each ITQ is the product of the red snapper quota, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each red snapper shareholder's percentage share, reflecting share transfers reported on forms received by the RD through October 31.

(2) The RD will provide each red snapper shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred. If the transfer is by sale, the seller must enter the sale price on the coupon.

(4) Except when the red snapper bag limit applies, red snapper in or from the EEZ or on board a vessel that has been issued a commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), may not be possessed in an amount, in eviscerated weight, exceeding the total of ITQ coupons on board. (See § 622.39(a) for applicability of the bag limit.)

(5) Prior to termination of a trip, the operator's signature and the date signed must be written in ink on the ''Vessel'' part of ITQ coupons totaling at least the eviscerated weight of the red snapper on board. An owner or operator of a vessel must separate the ''Vessel'' part of each such coupon, enter thereon the permit number of the dealer to whom the red snapper are transferred, and submit the ''Vessel'' parts with the logbook forms for that fishing trip. An owner or operator of a vessel must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(6) Red snapper harvested from the EEZ or possessed by a vessel with a commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), may be transferred only to a dealer with a Gulf reef fish permit, as required under § 622.4(a)(4). The ''Fish House'' part of each ITQ coupon must be given to such dealer, or the agent or employee of such dealer, in amounts totaling at least the eviscerated weight of the red snapper transferred to that dealer.

(7) A dealer with a Gulf reef fish permit may receive red snapper only from a vessel that has on board a commercial permit for Gulf reef fish. A dealer, or the agent or employee of a dealer, must receive the ''Fish House'' part of ITQ coupons totaling at least the eviscerated weight of the red snapper received. Immediately upon receipt of red snapper, the dealer, or the agent or employee of the dealer, must enter the permit number of the vessel received from and date and sign each such ''Fish House'' part. The dealer must submit all such parts as required by paragraph (d)(6) of this section. A dealer, agent, or employee must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(c) *Procedures for implementation*—(1) *Initial shareholders.* The following persons are initial shareholders in the red snapper ITQ system:

(i) Either the owner or operator of a vessel with a valid permit on August 29, 1995, provided such owner or operator had a landing of red snapper during the period 1990 through 1992. If the earned income of an operator was used to qualify for the permit that is valid on August 29, 1995, such operator is the initial shareholder rather than the owner. In the case of an owner, the term ''person'' includes a corporation or other legal entity; and

(ii) A historical captain. A historical captain means an operator who meets all of the following qualifications:

(A) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who was paid from the share under his or her control.

(B) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992.

(C) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993.

(D) Landed red snapper prior to November 7, 1989.

(2) *Initial shares.* (i) Initial shares are apportioned to initial shareholders based on each shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. However, no person who is an initial shareholder under paragraph (c)(1) of this section will receive an initial percentage share that will amount to less than 100 lb (45.36 kg), round weight, of red snapper (90 lb (41 kg), eviscerated weight).

(ii) The percentage shares remaining after the minimum shares have been calculated under paragraph (c)(2)(i) of this section are apportioned based on each remaining shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. In a case where a landing is associated with an owner and a historical captain, such landing is apportioned between the owner and historical captain in accordance with the share agreement in effect at the time of the landing.

(iii) The determinations of landings of red snapper during the period 1990 through 1992 and historical captain status are made in accordance with the data collected under Amendment 9 to the FMP. Those data identify each red snapper landing during the period 1990 through 1992. Each landing is associated with an owner and, when an operator's earned income was used to qualify for the vessel permit at the time of the landing, with such operator. Where appropriate, a landing is also associated with a historical captain. However, a red snapper landings record during that period that is associated solely with an owner may be retained by that owner or transferred as follows:

(A) An owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, who transferred a vessel permit to another vessel owned by him or her will retain the red snapper landings record for the previous vessel.

(B) An owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, will retain the landings record of a permitted vessel if the vessel had a change of ownership to another entity without a substantive change in control of the vessel. It will be presumed that there was no substantive change in control of a vessel if a successor in interest received at least a 50 percent interest in the vessel as a result of the change of ownership whether the change of ownership was—

(*1*) From a closely held corporation to its majority shareholder;

(*2*) From an individual who became the majority shareholder of a closely held corporation receiving the vessel;

(*3*) Between closely held corporations with a common majority shareholder; or

(*4*) From one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(C) In other cases of transfer of a permit through change of ownership of a vessel, an owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, will receive credit for the landings record of the vessel before his or her ownership only if there is a legally binding agreement for transfer of the landings record.

(iv) Requests for transfers of landings records must be submitted to the RD and must be postmarked not later than December 14, 1995. The RD may require documentation supporting such request. After considering requests for transfers of landings records, the RD will advise each initial shareholder or applicant of his or her tentative allocation of shares.

(3) *Notification of status.* The RD will advise each owner, operator, and historical captain for whom NMFS has a record of a red snapper landing during the period 1990 through 1992, including those who submitted such record under Amendment 9 to the FMP, of his or her tentative status as an initial shareholder and the tentative landings record that will be used to calculate his or her initial share.

(4) *Appeals.* (i) A special advisory panel, appointed by the GMFMC to function as an appeals board, will consider written requests from persons who contest their tentative status as an initial shareholder, including historical captain status, or tentative landings record. In addition to considering written requests, the board may allow personal appearances by such persons before the board.

(ii) The panel is only empowered to consider disputed calculations or determinations based on documentation submitted under Amendment 9 to the FMP regarding landings of red snapper during the period 1990 through 1992, including transfers of such landings records, or regarding historical captain status. In addition, the panel may consider applications and documentation of landings not submitted under Amendment 9 if, in the board's opinion, there is justification for the late application and documentation. The board is not empowered to consider an application from a person who believes he or she should be eligible because of hardship or other factors.

(iii) A written request for consideration by the board must be submitted to the RD, postmarked not later than December 27, 1995, and must contain documentation supporting the allegations that form the basis for the request.

(iv) The board will meet as necessary to consider each request that is submitted in a timely manner. Members of the appeals board will provide their individual recommendations for each appeal to the GMFMC, which will in turn submit its recommendation to the RD. The board and the GMFMC will recommend whether the eligibility criteria, specified in Amendment 8 to the FMP and paragraphs (c)(1) and (c)(2) of this section, were correctly applied in each case, based solely on the available record including documentation submitted by the applicant. The GMFMC will also base its recommendation on the recommendations of the board. The RD will decide the appeal based on the above criteria and the available record, including documentation submitted by the applicant and the recommendation of the GMFMC. The RD will notify the appellant of his decision and the reason therefor, in writing, normally within 45 days of receiving the GMFMC's recommendation. The RD's decision will constitute the final administrative action by NMFS on an appeal.

(v) Upon completion of the appeal process, the RD will issue share certificates to initial shareholders.

(5) *Transfers of shares.* The following restrictions apply to the transfer of shares:

(i) The transfer of shares is prohibited through September 30, 1996.

(ii) From October 1, 1996, through September 30, 1997, shares may be transferred only to other persons who are initial shareholders and are U.S. citizens or permanent resident aliens.

(d) *Exceptions/additions to general measures.* Other provisions of this part notwithstanding—

(1) Management of the red snapper ITQ system extends to adjoining state waters in the manner stated in paragraphs (d)(2) and (d)(3) of this section.

(2) For a dealer to receive red snapper harvested from state waters adjoining the Gulf EEZ by or possessed on board a vessel with a commercial permit for Gulf reef fish, the dealer permit for Gulf reef fish specified in § 622.4(a)(4) must have been issued to the dealer.

(3) A copy of the dealer's permit must accompany each vehicle that is used to

pick up from a fishing vessel red snapper from adjoining state waters harvested by or possessed on board a vessel with a commercial permit for Gulf reef fish.

(4) As a condition of a commercial vessel permit for Gulf reef fish, without regard to where red snapper are harvested or possessed, a vessel with such permit must comply with the red snapper ITQ requirements of paragraph (b) of this section; may not transfer or receive red snapper at sea; and must maintain red snapper with head and fins intact through landing, and the exceptions to that requirement contained in § 622.38(d) do not apply to red snapper. Red snapper may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(5) As a condition of a dealer permit for Gulf reef fish, as required under § 622.4(a)(4) or under paragraph (d)(2) of this section, without regard to where red snapper are harvested or possessed, a permitted dealer must comply with the red snapper ITQ requirements of paragraph (b) of this section.

(6) In any month that a red snapper is received, a dealer must submit the report required under § 622.5(c)(3)(ii). The ''Fish House'' parts of red snapper individual transferable coupons, received during the month in accordance with paragraph (b) of this section, must be submitted to the SRD with the report.

(7) It is unlawful for a person to do any of the following:

(i) Receive red snapper from a fishing vessel without a dealer permit for Gulf reef fish.

(ii) Fail to carry a copy of the dealer's permit, as specified in paragraph (d)(3) of this section.

(iii) Fail to comply with a condition of a permit, as specified in paragraph (d)(4) or (d)(5) of this section.

(iv) Fail to report red snapper received, as specified in paragraph (d)(6) of this section.

EFFECTIVE DATE NOTE: At 61 FR 48415, Sept. 13, 1996, § 622.16 was stayed indefinitely.

§ 622.17 South Atlantic golden crab controlled access.

(a) *General.* In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial vessel permits have been issued for the fishery. No additional permits may be issued.

(b) *Fishing zones.* (1) The South Atlantic EEZ is divided into three fishing zones for golden crab. A permitted vessel may fish for golden crab only in the zone shown on its permit. A vessel may possess golden crab only in that zone, except that other zones may be transited if the vessel notifies NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (813–570–5344) in advance and does not fish in an unpermitted zone. The designated fishing zones are as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 25° N. lat. to 28° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) An owner of a permitted vessel may request that NMFS change the zone specified on a permit from the middle or southern zone to the northern zone. A request for such change and the existing permit must be submitted from an owner of a permitted vessel to the RA.

(c) *Transfer.* (1) An owner of a vessel with a valid golden crab permit may request that NMFS transfer the permit to another vessel by returning the existing permit(s) to the RA with an application for a permit for the replacement vessel.

(2) To obtain a commercial vessel permit via transfer, the owner of the replacement vessel must submit to the RA a valid permit for a vessel with a documented length overall, or permits for vessels with documented aggregate lengths overall, of at least 90 percent of the documented length overall of the replacement vessel.

(3) In addition to the provisions of paragraph (c)(2) of this section, the owner of a permitted vessel who has requested that NMFS transfer that permit to a smaller vessel (i.e., downsized) may subsequently request NMFS transfer that permit to a vessel of a length calculated from the length of the permitted vessel immediately prior to downsizing.

(d) *Renewal.* In addition to the procedures and requirements of § 622.4(h) for commercial vessel permit renewals, for

a golden crab permit to be renewed, the SRD must have received reports for the permitted vessel, as required by § 622.5(a)(1)(v), documenting that at least 5,000 lb (2,268 kg) of golden crab were landed from the South Atlantic EEZ by the permitted vessel during at least one of the two 12-month periods immediately prior to the expiration date of the vessel permit.

[63 FR 57590, Oct. 28, 1998, as amended at 64 FR 59126, Nov. 2, 1999]

§ 622.18 South Atlantic snapper-grouper limited access.

(a) *Applicability*. Beginning December 14, 1998, the only valid commercial vessel permits for South Atlantic snapper-grouper are those that have been issued under the limited access criteria in this section. A vessel may have either a transferable commercial permit or a trip-limited commercial permit for South Atlantic snapper-grouper.

(b) *Initial eligibility*. A vessel is eligible for an initial limited access commercial permit for South Atlantic snapper-grouper if the owner owned a vessel with a commercial vessel permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, and owned a permitted vessel that had at least one landing of snapper-grouper from the South Atlantic from January 1, 1993, through August 20, 1996, as reported on fishing vessel logbooks received by the SRD on or before August 20, 1996. An owner whose permitted vessels had landings of snapper-grouper from the South Atlantic of at least 1,000 lb (453.6 kg), whole weight, in any one of the years 1993, 1994, or 1995, or in 1996 through August 20, as reported on fishing vessel logbooks received by the SRD on or before August 20, 1996, is eligible for an initial transferable permit. All other qualifying owners are eligible for an initial trip-limited permit.

(c) *Determinations of eligibility*—(1) *Permit history*. The sole basis for determining whether a vessel had a commercial vessel permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, is NMFS' permit records. An owner of a currently permitted vessel who believes he/she meets the February 11, 1996, through February 11, 1997, permit history criterion based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership. No more than one owner of a currently permitted vessel will be credited with meeting the permit history criterion based on a vessel's permit history.

(2) *Landings*. (i) Landings of snapper-grouper from the South Atlantic during the qualifying period are determined from fishing vessel logbooks received by the SRD on or before August 20, 1996. State trip ticket data may be considered in support of claimed landings provided such trip ticket data were received by the state on or before September 20, 1996.

(ii) Only landings when a vessel had a valid commercial permit for snapper-grouper and only landings that were harvested, landed, and sold in compliance with state and Federal regulations may be used to establish eligibility.

(iii) For the purpose of eligibility for a limited access commercial permit for snapper-grouper, the owner of a vessel that had a commercial snapper-grouper permit during the qualifying period retains the snapper-grouper landings record of that vessel during the time of his/her ownership unless a sale of the vessel included a written agreement that credit for such landings was transferred to the new owner. Such transfer of credit must be for the vessel's entire record of landings of snapper-grouper from the South Atlantic.

(d) *Implementation procedures*—(1) *Notification of status*. On or about July 27, 1998, the RA will notify each owner of a vessel that had a commercial permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, and each owner of a vessel that has a commercial permit for South Atlantic snapper-grouper on July 16, 1998, of NMFS' initial determination of eligibility for either a transferable or a trip-limited, limited access commercial permit for South Atlantic snapper-grouper. Each notification will include an application

for such permit. Addresses for such notifications will be based on NMFS' permit records. A vessel owner who believes he/she qualifies for a limited access commercial permit for South Atlantic snapper-grouper and who does not receive such notification must obtain an application from the RA.

(2) *Applications.* (i) An owner of a vessel who desires a limited access commercial permit for South Atlantic snapper-grouper must submit an application for such permit postmarked or hand-delivered not later than October 14, 1998. Failure to apply in a timely manner will preclude permit issuance even when the vessel owner meets the eligibility criteria for such permit.

(ii) A vessel owner who agrees with NMFS' initial determination of eligibility, including type of permit (transferable or trip-limited), need provide no documentation of eligibility with his/her application.

(iii) A vessel owner who disagrees with the initial determination of eligibility or type of permit must specify the type of permit applied for and provide documentation of eligibility. Documentation and other information submitted on or with an application are subject to verification by comparison with state, Federal, and other records and information. Submission of false documentation or information may disqualify an owner from initial participation in the limited access commercial South Atlantic snapper-grouper fishery and is a violation of the regulations in this part.

(iv) If an application that is postmarked or hand delivered in a timely manner is incomplete, the RA will notify the vessel owner of the deficiency. If the owner fails to correct the deficiency within 20 days of the date of the RA's notification, the application will be considered abandoned.

(3) *Issuance.* (i) If a complete application is submitted in a timely manner and the eligibility requirements specified in paragraph (b) of this section are met, the RA will issue an initial commercial vessel permit, transferable or trip-limited, as appropriate, and mail it to the vessel owner not later than December 3, 1998.

(ii) If the eligibility requirements specified in paragraph (b) of this section are not met, the RA will notify the vessel owner, in writing, not later than November 13, 1998 of such determination and the reasons for it.

(4) *Reconsideration.* (i) A vessel owner may request reconsideration of the RA's determination regarding initial permit eligibility by submitting a written request for reconsideration to the RA. Such request must be postmarked or hand delivered within 20 days of the date of the RA's notification denying initial permit issuance and must provide written documentation supporting permit eligibility.

(ii) Upon receipt of a request for reconsideration, the RA will forward the initial application, the RA's response to that application, the request for reconsideration, and pertinent records to an Application Oversight Board consisting of state directors (or their designees) from each state in the Council's area of jurisdiction. Upon request, a vessel owner may make a personal appearance before the Application Oversight Board.

(iii) If reconsideration by the Application Oversight Board is requested, such request constitutes the vessel owner's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Act for the RA to make available to the Application Oversight Board members such confidential catch and other records as are pertinent to the matter under reconsideration.

(iv) The Application Oversight Board may only deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly in the vessel owner's case, based solely on the available record, including documentation submitted by the owner. The Application Oversight Board may not consider whether an owner should have been eligible for a commercial vessel permit because of hardship or other factors. The Application Oversight Board members will provide individual recommendations for each application for reconsideration to the RA.

(v) The RA will make a final decision based on the eligibility criteria specified in paragraph (b) of this section and the available record, including documentation submitted by the vessel owner, and the recommendations and

comments from members of the Application Oversight Board. The RA may not consider whether a vessel owner should have been eligible for a commercial vessel permit because of hardship or other factors. The RA will notify the owner of the decision and the reason for it, in writing, within 15 days of receiving the recommendations from the Application Oversight Board members. The RA's decision will constitute the final administrative action by NMFS.

(e) *Transfers of permits.* A snapper-grouper limited access permit is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, an application for transfer must be submitted to the RA.

(1) *Transferable permits.* (i) An owner of a vessel with a transferable permit may request that the RA transfer the permit to another vessel owned by the same entity.

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(iii) A transferable permit may be transferred to a vessel whose owner had, as of August 20, 1996, a written contract for the purchase of a vessel that included a provision transferring to the new owner the rights to any limited access permit to which the former owner might become entitled under the provisions for initial issue of limited access permits. To be considered, any such written contract must be submitted to the RA postmarked or hand-delivered on or before December 14, 1998.

(iv) Except as provided in paragraphs (e)(1)(i), (ii), and (iii) of this section, a person desiring to acquire a limited access, transferable permit for South Atlantic snapper-grouper must obtain and exchange two such permits for one new permit.

(v) A transfer of a permit that is undertaken under paragraph (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this section will constitute a transfer of the vessel's entire catch history to the new owner.

(2) *Trip-limited permits.* An owner of a vessel with a triplimited permit may request that the RA transfer the permit to another vessel owned by the same entity.

(f) *Renewal.* NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within 60 days of the permit's expiration date.

[63 FR 38301, July 16, 1998, as amended at 64 FR 59126, Nov. 2, 1999; 65 FR 51252, Aug. 23, 2000]

Subpart C—Management Measures

§ 622.30 Fishing years.

The fishing year for species or species groups governed in this part is January 1 through December 31 except for the following:

(a) *Allowable octocoral*— October 1 through September 30.

(b) *King and Spanish mackerel.* The fishing year for the king and Spanish mackerel bag limits specified in § 622.39(c)(1) is January 1 through December 31. The following fishing years apply only for the king and Spanish mackerel quotas specified in § 622.42(c):

(1) *Gulf migratory group king mackerel*— July 1 through June 30.

(2) *All other migratory groups of king and Spanish mackerel*— April 1 through March 31.

(c) *Wreckfish*— April 16 through April 15.

(d) *South Atlantic greater amberjack*— May 1 through April 30.

[61 FR 34934, July 3, 1996, as amended at 64 FR 3627, Jan. 25, 1999]

§ 622.31 Prohibited gear and methods.

In addition to the prohibited gear/methods specified in this section, see §§ 622.33, 622.34, and 622.35 for seasonal/area prohibited gear/methods and § 622.41 for species specific authorized and unauthorized gear/methods.

(a) *Explosives.* An explosive (except an explosive in a powerhead) may not be used to fish in the Caribbean, Gulf, or South Atlantic EEZ. A vessel fishing in the EEZ for a species governed in this part, or a vessel for which a permit has been issued under § 622.4, may not have on board any dynamite or similar explosive substance.

(b) *Chemicals and plants.* A toxic chemical may not be used or possessed in a coral area, and a chemical, plant, or plant-derived toxin may not be used to harvest a Caribbean coral reef resource in the Caribbean EEZ.

(c) *Fish traps.* (1) A fish trap may not be used in the South Atlantic EEZ.

(2) A fish trap may not be used or possessed in the Gulf EEZ west of 85°30′ W. long. and, after February 7, 2007, may not be used or possessed in the Gulf EEZ.

(3) A fish trap used other than where authorized in paragraph (c) (1) or (2) of this section may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(d) *Longlines for wreckfish.* A bottom longline may not be used to fish for wreckfish in the South Atlantic EEZ. A person aboard a vessel that has a longline on board may not retain a wreckfish in or from the South Atlantic EEZ. For the purposes of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 mi (2.4 km) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(e) *Poisons.* (1) A poison, drug, or other chemical may not be used to fish for Caribbean reef fish in the Caribbean EEZ.

(2) A poison may not be used to take Gulf reef fish in the Gulf EEZ.

(3) A poison may not be used to fish for South Atlantic snapper-grouper in the South Atlantic EEZ.

(f) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource or in the Gulf or South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

(g) *Powerheads.* A powerhead may not be used in the Caribbean EEZ to harvest Caribbean reef fish or in the EEZ off South Carolina to harvest South Atlantic snapper-grouper. The possession of a mutilated Caribbean reef fish in or from the Caribbean EEZ, or a mutilated South Atlantic snapper-grouper in or from the EEZ off South Carolina, and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(h) *Rebreathers and spearfishing gear.* In the South Atlantic EEZ, a person using a rebreather may not harvest South Atlantic snapper-grouper with spearfishing gear. The possession of such snapper-grouper while in the water with a rebreather is *prima facie* evidence that such fish was harvested with spearfishing gear while using a rebreather.

(i) *Sea bass pots.* A sea bass pot may not be used in the South Atlantic EEZ south of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL). A sea bass pot deployed in the EEZ south of 28°35.1′ N. lat. may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(j) *Spears and hooks.* A spear, hook, or similar device may not be used in the Caribbean EEZ to harvest a Caribbean spiny lobster. The possession of a speared, pierced, or punctured Caribbean spiny lobster in or from the Caribbean EEZ is *prima facie* evidence of violation of this section.

[61 FR 34934, July 3, 1996, as amended at 62 FR 13987, Mar. 25, 1997; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998]

EFFECTIVE DATE NOTE: At 65 FR 56502, Sept. 19, 2000, § 622.31 was amended by adding paragraph (k), effective Sept. 14, 2000 through Mar. 18, 2001. For the convenience of the user, the added text follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(k) *Traps for royal red shrimp in the Gulf EEZ.* A trap may not be used to fish for royal red shrimp in the Gulf EEZ. A trap used to fish for royal red shrimp in the Gulf EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

§ 622.32 Prohibited and limited-harvest species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the

EEZ is responsible for the limit applicable to that vessel.

(b) *Prohibited species.* Prohibited species, by geographical area, are as follows:

(1) *Caribbean.* (i) Caribbean prohibited coral may not be fished for or possessed in or from the Caribbean EEZ. The taking of Caribbean prohibited coral in the Caribbean EEZ is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

(ii) Foureye, banded, and longsnout butterflyfish; jewfish; Nassau grouper; and seahorses may not be harvested or possessed in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

(iii) Egg-bearing spiny lobster in the Caribbean EEZ must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(2) *Gulf.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the Gulf EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Jewfish may not be harvested or possessed in or from the Gulf EEZ.

(iii) Red drum and Nassau grouper may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

(3) *Mid-Atlantic.* Red drum may not be harvested or possessed in or from the Mid-Atlantic EEZ south of a line extending in a direction of 115° from true north commencing at a point at 40°29.6′ N. lat., 73°54.1′ W. long., such point being the intersection of the New Jersey/New York boundary with the 3-nm line denoting the seaward limit of state waters. Red drum caught in such portion of the Mid-Atlantic EEZ must be released immediately with a minimum of harm.

(4) *South Atlantic.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the South Atlantic EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Jewfish and Nassau grouper may not be harvested or possessed in or from the South Atlantic EEZ. Jewfish and Nassau grouper taken in the South Atlantic EEZ incidentally by hook-and-line must be released immediately by cutting the line without removing the fish from the water.

(iii) Red drum may not be harvested or possessed in or from the South Atlantic EEZ. Red drum caught in the South Atlantic EEZ must be released immediately with a minimum of harm.

(iv) Wild live rock may not be harvested or possessed in the South Atlantic EEZ.

(v) It is intended that no female golden crabs in or from the South Atlantic EEZ be retained on board a vessel and that any female golden crab in or from the South Atlantic EEZ be released in a manner that will ensure maximum probability of survival. However, to accommodate legitimate incidental catch and retention, the number of female golden crabs in or from the South Atlantic EEZ retained on board a vessel may not exceed 0.5 percent, by number, of all golden crabs on board. See § 622.45(f)(1) regarding the prohibition of sale of female golden crabs.

(vi) South Atlantic snapper-grouper may not be possessed in whole, gutted, or filleted form by a person aboard a vessel fishing for or possessing golden crab in or from the South Atlantic EEZ or possessing a golden crab trap in the South Atlantic. Only the head, fins, and backbone (collectively the ''rack'') of South Atlantic snapper-grouper may be possessed for use as bait.

(c) *Limited-harvest species.* A person who fishes in the EEZ may not combine a harvest limitation specified in this paragraph (c) with a harvest limitation applicable to state waters. A

species subject to a harvest limitation specified in this paragraph (c) taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(1) *Cobia*. No person may possess more than two cobia per day in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

(2) *Cubera snapper*. No person may harvest more than two cubera snapper measuring 30 inches (76.2 cm), TL, or larger, per day in the South Atlantic EEZ off Florida and no more than two such cubera snapper in or from the South Atlantic EEZ off Florida may be possessed on board a vessel at any time.

(3) *Speckled hind and warsaw grouper*. The possession of speckled hind and warsaw grouper in or from the South Atlantic EEZ is limited to one of each per vessel per trip.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 62 FR 13988, Mar. 25, 1997; 63 FR 10567, Mar. 4, 1998]

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures*. (1) *Mutton snapper spawning aggregation area*. From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	17°37.8′	64°53.0′
B	17°39.0′	64°53.0′
C	17°39.0′	64°50.5′
D	17°38.1′	64°50.5′
E	17°37.8′	64°52.5′
A	17°37.8′	64°53.0′

(2) *Red hind spawning aggregation areas*. From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed.

(i) East of St. Croix.

Point	North lat.	West long.
A	17°50.2′	64°27.9′
B	17°50.1′	64°26.1′
C	17°49.2′	64°25.8′
D	17°48.6′	64°25.8′
E	17°48.1′	64°26.1′
F	17°47.5′	64°26.9′
A	17°50.2′	64°27.9′

(ii) *West of Puerto Rico*—(A) Bajo de Cico.

Point	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.4′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.47

(B) *Tourmaline Bank*.

Point	North lat.	West long.
A	18°11.2′	67°22.4′
B	18°11.2′	67°19.2′
C	18°08.2′	67°19.2′
D	18°08.2′	67°22.4′
A	18°11.2′	67°22.4′

(C) *Abrir La Sierra Bank*.

Point	North lat.	West long.
A	18°06.5′	67°26.9′
B	18°06.5′	67°23.9′
C	18°03.5′	67°23.9′
D	18°03.5′	67°26.9′
A	18°06.5′	67°26.9′

(3) *Queen conch closure*. From July 1 through September 30, each year, no person may fish for queen conch in the Caribbean EEZ and no person may possess on board a fishing vessel a queen conch in or from the Caribbean EEZ.

(b) *Year-round area closures*. (1) *Hind Bank Marine Conservation District (MCD)*. The following activities are prohibited within the Hind Bank MCD: Fishing for any species, and anchoring by fishing vessels. The Hind Bank MCD is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	18°13.2′	65°06.0′
B	18°13.2′	64°59.0′
C	18°11.8′	64°59.0′
D	18°10.7′	65°06.0′
A	18°13.2′	65°06.0′

(2) [Reserved]

[64 FR 60133, Nov. 4, 1999]

§ 622.34 Gulf EEZ seasonal and/or area closures.

(a) *Alabama SMZ*. The Alabama SMZ consists of artificial reefs and surrounding areas. In the Alabama SMZ,

fishing by a vessel that is operating as a charter vessel or headboat, a vessel that does not have a commercial permit for Gulf reef fish, as required under § 622.4(a)(2), or a vessel with such a permit fishing for Gulf reef fish is limited to hook-and-line gear with three or fewer hooks per line and spearfishing gear. A person aboard a vessel that uses on any trip gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear in the Alabama SMZ is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The Alabama SMZ is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	30°02.5′	88°07.7′
B	30°02.6′	87°59.3′
C	29°55.0′	87°55.5′
D	29°54.5′	88°07.5′
A	30°02.5′	88°07.7′

(b) *Florida middle grounds HAPC.* Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited year round in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°42.5′	84°24.8′
B	28°42.5′	84°16.3′
C	28°11.0′	84°00.0′
D	28°11.0′	84°07.0′
E	28°26.6′	84°24.8′
A	28°42.5′	84°24.8′

(c) *Reef fish longline and buoy gear restricted area.* A person aboard a vessel that uses, on any trip, longline or buoy gear in the longline and buoy gear restricted area is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b)(1) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b)(1), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The longline and buoy gear restricted area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 1, in Appendix B of this part.

(d) *Riley's Hump seasonal closure.* From May 1 through June 30, each year, fishing is prohibited in the following area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°32.2′	83°08.7′
B	24°32.2′	83°05.2′
C	24°28.7′	83°05.2′
D	24°28.7′	83°08.7′
A	24°32.2′	83°08.7′

(e) *Shrimp/stone crab separation zones.* Five zones are established in the Gulf EEZ and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. Although Zone II is entirely within Florida's waters, it is included in this paragraph (e) for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph (e) are as follows:

Point	North lat.	West long.
A	28°59′30″	82°45′36″
B	28°59′30″	83°00′10″
C	28°26′01″	82°59′47″
D	28°26′01″	82°56′54″
E	28°41′39″	82°55′25″
F	28°41′39″	82°56′09″
G	28°48′56″	82°56′19″
H	28°53′51″	82°51′19″
I [1]	28°54′43″	82°44′52″
J [2]	28°51′09″	82°44′00″
K	28°50′59″	82°54′16″
L	28°41′39″	82°53′56″
M [3]	28°41′39″	82°38′46″
N	28°41′39″	82°53′12″
O	28°30′51″	82°55′11″
P	28°40′00″	82°53′08″
Q	28°40′00″	82°47′58″
R	28°35′14″	82°47′47″
S	28°30′51″	82°52′55″
T	28°27′46″	82°55′09″
U	28°30′51″	82°52′09″

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(1) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ from October 5 through May 20, each year.

(2) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(3) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ from October 5 through May 20, each year.

(4) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(i) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ from October 5 through December 1 and from April 2 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone IV that is in the EEZ from December 2 through April 1, each year.

(5) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(i) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ from October 5 through November 30 and from March 16 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone V that is in the EEZ from December 1 through March 15, each year.

(f) *Southwest Florida seasonal trawl closure.* From January 1 to 1 hour after official sunset on May 20, each year, trawling, including trawling for live bait, is prohibited in that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
B[1]	26°16.0′	81°58.5′
C	26°00.0′	82°04.0′
D	25°09.0′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

(g) *Reef fish stressed area.* The stressed area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 2, in Appendix B of this part.

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area. The provisions of this paragraph do not apply to the following species: dwarf sand perch, hogfish, and sand perch.

(2) A roller trawl may not be used in the stressed area. Roller trawl means a trawl net equipped with a series of large, solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, that is, in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

(3) A fish trap may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Assistant Administrator (including an authorized officer).

(h) *Texas closure.* (1) From 30 minutes after official sunset on May 15 to 30 minutes after official sunset on July 15, trawling, except trawling for royal red shrimp beyond the 100-fathom (183-m) depth contour, is prohibited in the Gulf EEZ off Texas.

(2) In accordance with the procedures and restrictions of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the RA may adjust the closing and/or opening date of the Texas closure to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days. Notification of the adjustment of the closing or opening date will be published in the FEDERAL REGISTER.

(i) *Tortugas shrimp sanctuary.* (1) The Tortugas shrimp sanctuary is closed to trawling. The Tortugas shrimp sanctuary is that part of the EEZ off Florida shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
N[1]	25°52.9′	81°37.9′
F	24°50.7′	81°51.3′
G[2]	24°40.1′	82°26.7′
H[3]	24°34.7′	82°35.2′
P[4]	24°35.0′	82°08.0′

[1] Coon Key Light.
[2] New Ground Rocks Light.

[3] Rebecca Shoal Light.
[4] Marquessas Keys.

(2) The provisions of paragraph (i)(1) of this section notwithstanding—

(i) Effective from April 11 through September 30, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point T at 24°47.8′ N. lat., 82°01.0′ W. long. to point U at 24°43.83′ N. lat., 82°01.0′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55′ N. lat., 82°15.0′ W. long.; thence north to point W at 24°43.6′ N. lat., 82°15.0′ W. long.

(ii) Effective from April 11 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point W to point V, both points as specified in paragraph (i)(2)(i) of this section, to point G, as specified in paragraph (i)(1) of this section.

(iii) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point F, as specified in paragraph (i)(1) of this section, to point Q at 24°46.7′ N. lat., 81°52.2′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (i)(2)(i) of this section.

(j) *West and East Flower Garden Banks HAPC.* Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited year-round in the HAPC. The West and East Flower Garden Banks are geographically centered at 27°52′14.21″ N. lat., 93°48′54.79″ W. long. and 27°55′07.44″ N. lat., 93°36′08.49″ W. long., respectively. The HAPC extends from these centers to the 50-fathom (300-ft) (91.4-m) isobath.

(k) *Closure of the Madison and Swanson sites and Steamboat Lumps.* No person may fish within the Madison and Swanson sites or Steamboat Lumps for any species of fish except highly migratory species. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*). This prohibition is effective through June 16, 2004. For the purpose of this paragraph (k), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17′	85°50′
B	29°17′	85°38′
C	29°06′	85°38′
D	29°06′	85°50′
A	29°17′	85°50′

Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14′	84°48′
B	28°14′	84°37′
C	28°03′	84°37′
D	28°03′	84°48′
A	28°14′	84°48′

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on October 1, whichever occurs first. From October 1 to December 1, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to

where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, the limit for such possession during a closed period is zero.

(m) *Closures of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through April 20 and from November 1 through December 31. During a closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(n) [Reserved]

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper.* From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of where harvested. However, a person aboard a vessel for which the permit indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain gag, red grouper, and black grouper under the bag and possession limit specified in § 622.39(b), provided the vessel is operating as a charter vessel or headboat. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

(p) *Closures of the Gulf group king mackerel gillnet fishery.* The gillnet fishery for Gulf group king mackerel in or from the Gulf EEZ is closed each fishing year from July 1 until 6:00 a.m. on the day after the Martin Luther King Jr. Federal holiday. The gillnet fishery also is closed during all subsequent weekends and observed Federal holidays, except for the first weekend following the Martin Luther King Jr. holiday which will remain open to the gillnet fishery provided a notification of closure of that fishery has not been filed under § 622.43(a). Weekend closures are effective from 6:00 a.m. Saturday to 6:00 a.m. Monday. Holiday closures are effective from 6:00 a.m. on the observed Federal holiday to 6:00 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the southern Florida west coast subzone may not fish for or possess Gulf group king mackerel.

[61 FR 34934, July 3, 1996, as amended at 61 FR 48642, Sept. 16, 1996; 62 FR 46679, Sept. 4, 1997; 62 FR 47767, Sept. 11, 1997; 62 FR 67722, Dec. 30, 1997; 64 FR 47713, Sept. 1, 1999; 64 FR 57404, Oct. 25, 1999; 64 FR 59126, Nov. 2, 1999; 65 FR 30363, May 11, 2000; 65 FR 31830, May 19, 2000; 65 FR 50162, Aug. 17, 2000]

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

(a) *Allowable octocoral closed area.* No person may harvest or possess allowable octocoral in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL).

(b) *Longline closed areas.* A longline may not be used to fish in the EEZ for South Atlantic snapper-grouper south of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL); or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location. A person aboard a vessel with a longline on board that fishes on a trip in the South Atlantic EEZ south of 27°10′ N. lat., or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in § 622.39(d)(1), and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(c) *Oculina Bank*—(1) *HAPC.* The Oculina Bank HAPC encompasses an area bounded on the north by 28°30’ N. lat., on the south by 27°30’ N. lat., on

the east by the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°00' W. long.; and two adjacent areas: the first bounded on the north by 28°30' N. lat., on the south by 28°29' N. lat., on the east by 80°00' W. long., and on the west by 80°03' W. long.; and the second bounded on the north by 28°17' N. lat., on the south by 28°16' N. lat., on the east by 80°00 W. long., and on the west by 80°03' W. long. In the Oculina Bank HAPC, no person may:

(i) Use a bottom longline, bottom trawl, dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for rock shrimp or possess rock shrimp in or from the area on board a fishing vessel.

(2) *Experimental closed area.* Within the Oculina Bank HAPC, the experimental closed area is bounded on the north by 27°53' N. lat., on the south by 27°30' N. lat., on the east by 79°56' W. long., and on the west by 80°00' W. long. No person may fish for South Atlantic snapper-grouper in the experimental closed area, and no person may retain South Atlantic snapper-grouper in or from the area. In the experimental closed area, any South Atlantic snapper-grouper taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(d) *South Atlantic shrimp cold weather closure.* (1) Pursuant to the procedures and criteria established in the FMP for the Shrimp Fishery of the South Atlantic Region, when Florida, Georgia, North Carolina, or South Carolina closes all or a portion of its waters of the South Atlantic to the harvest of brown, pink, and white shrimp, the Assistant Administrator may concurrently close the South Atlantic EEZ adjacent to the closed state waters by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the ending date of the closure in state waters, but may be ended earlier based on the state's request. In the latter case, the Assistant Administrator will terminate a closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

(2) During a closure, as specified in paragraph (d)(1) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ (closed area); and no person may possess on board a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from a closed area, except as authorized in paragraph (d)(2)(iii) of this section.

(ii) No person aboard a vessel trawling in that part of a closed area that is within 25 nm of the baseline from which the territorial sea is measured may use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through a closed area.

(e) *SMZs.* (1) The SMZs consist of artificial reefs and surrounding areas as follows:

(i) *Paradise Reef* is bounded on the north by 33°31.59′ N. lat.; on the south by 33°30.51′ N. lat.; on the east by 78°57.55′ W. long.; and on the west by 78°58.85′ W. long.

(ii) *Ten Mile Reef* is bounded on the north by 33°26.65′ N. lat.; on the south by 33°24.80′ N. lat.; on the east by 78°51.08′ W. long.; and on the west by 78°52.97′ W. long.

(iii) *Pawleys Island Reef* is bounded on the north by 33°26.58′ N. lat.; on the south by 33°25.76′ N. lat.; on the east by 79°00.29′ W. long.; and on the west by 79°01.24′ W. long.

(iv) *Georgetown Reef* is bounded on the north by 33°14.90′ N. lat.; on the south by 33°13.85′ N. lat.; on the east by 78°59.45′ W. long.; and on the west by 79°00.65′ W. long.

(v) *Capers Reef* is bounded on the north by 32°45.45′ N. lat.; on the south by 32°43.91′ N. lat.; on the east by

79°33.81′ W. long.; and on the west by 79°35.10′ W. long.

(vi) *Kiawah Reef* is bounded on the north by 32°29.78′ N. lat.; on the south by 32°28.25′ N. lat.; on the east by 79°59.00′ W. long.; and on the west by 80°00.95′ W. long.

(vii) *Edisto Offshore Reef* is bounded on the north by 32°15.30′ N. lat.; on the south by 32°13.90′ N. lat.; on the east by 79°50.25′ W. long.; and on the west by 79°51.45′ W. long.

(viii) *Hunting Island Reef* is bounded on the north by 32°13.72′ N. lat.; on the south by 32°12.30′ N. lat.; on the east by 80°19.23′ W. long.; and on the west by 80°21.00′ W. long.

(ix) *Fripp Island Reef* is bounded on the north by 32°15.92′ N. lat.; on the south by 32°14.75′ N. lat.; on the east by 80°21.62′ W. long.; and on the west by 80°22.90′ W. long.

(x) *Betsy Ross Reef* is bounded on the north by 32°03.60′ N. lat.; on the south by 32°02.88′ N. lat.; on the east by 80°24.57′ W. long.; and on the west by 80°25.50′ W. long.

(xi) *Hilton Head Reef/Artificial Reef—T* is bounded on the north by 32°00.71′ N. lat.; on the south by 31°59.42′ N. lat.; on the east by 80°35.23′ W. long.; and on the west by 80°36.37′ W. long.

(xii) *Artificial Reef—A* is bounded on the north by 30°56.4′ N. lat.; on the south by 30°55.2′ N. lat.; on the east by 81°15.4′ W. long.; and on the west by 81°16.5′ W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°51.4′ N. lat.; on the south by 30°50.1′ N. lat.; on the east by 81°09.1′ W. long.; and on the west by 81°10.4′ W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 30°59.1′ N. lat.; on the south by 30°57.8′ N. lat.; on the east by 80°57.7′ W. long.; and on the west by 80°59.2′ W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.6′ N. lat.; on the south by 31°05.6′ N. lat.; on the east by 81°11.4′ W. long.; and on the west by 81°13.3′ W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7′ N. lat.; on the south by 31°35.7′ N. lat.; on the east by 80°47.0′ W. long.; and on the west by 80°48.1′ W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.2′ N. lat.; on the south by 31°45.1′ N. lat.; on the east by 80°35.8′ W. long.; and on the west by 80°37.1′ W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2′ N. lat.; on the south by 31°50.3′ N. lat.; on the east by 80°46.0′ W. long.; and on the west by 80°47.2′ W. long.

(xix) *Ft. Pierce Inshore Reef* is bounded on the north by 27°26.8' N. lat.; on the south by 27°25.8' N. lat.; on the east by 80°09.24' W. long.; and on the west by 80°10.36' W. long.

(xx) *Ft. Pierce Offshore Reef* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°23.68′	80°03.95′
B	27°22.80′	80°03.60′
C	27°23.94′	80°00.02′
D	27°24.85′	80°00.33′
A	27°23.68′	80°03.95′

(xxi) *Key Biscayne/Artificial Reef—H* is bounded on the north by 25°42.82′ N. lat.; on the south by 25°41.32′ N. lat.; on the east by 80°04.22′ W. long.; and on the west by 80°05.53′ W. long.

(xxii) *Little River Offshore Reef* is bounded on the north by 33°42.10′ N. lat.; on the south by 33°41.10′ N. lat.; on the east by 78°26.40′ W. long.; and on the west by 78°27.10′ W. long.

(xxiii) *BP–25 Reef* is bounded on the north by 33°21.70′ N. lat.; on the south by 33°20.70′ N. lat.; on the east by 78°24.80′ W. long.; and on the west by 78°25.60′ W. long.

(xxiv) *Vermilion Reef* is bounded on the north by 32°57.80′ N. lat.; on the south by 32°57.30′ N. lat.; on the east by 78°39.30′ W. long.; and on the west by 78°40.10′ W. long.

(xxv) *Cape Romaine Reef* is bounded on the north by 33°00.00′ N. lat.; on the south by 32°59.50′ N. lat.; on the east by 79°02.01′ W. long.; and on the west by 79°02.62′ W. long.

(xxvi) *Y–73 Reef* is bounded on the north by 32°33.20′ N. lat.; on the south by 32°32.70′ N. lat.; on the east by 79°19.10′ W. long.; and on the west by 79°19.70′ W. long.

(xxvii) *Eagles Nest Reef* is bounded on the north by 32°01.48′ N. lat.; on the south by 32°00.98′ N. lat.; on the east by 80°30.00′ W. long.; and on the west by 80°30.65′ W. long.

(xxviii) *Bill Perry Jr. Reef* is bounded on the north by 33°26.20′ N. lat.; on the south by 33°25.20′ N. lat.; on the east by 78°32.70′ W. long.; and on the west by 78°33.80′ W. long.

(xxix) *Comanche Reef* is bounded on the north by 32°27.40′ N. lat.; on the south by 32°26.90′ N. lat.; on the east by 79°18.80′ W. long.; and on the west by 79°19.60′ W. long.

(xxx) *Murrel's Inlet 60 Foot Reef* is bounded on the north by 33°17.50' N. lat.; on the south by 33°16.50' N. lat.; on the east by 78°44.67' W. long.; and on the west by 78°45.98' W. long.

(xxxi) *Georgetown 95 Foot Reef* is bounded on the north by 33°11.75' N. lat.; on the south by 33°10.75' N. lat.; on the east by 78°24.10' W. long.; and on the west by 78°25.63' W. long.

(xxxii) *New Georgetown 60 Foot Reef* is bounded on the north by 33°09.25' N. lat.; on the south by 33°07.75' N. lat.; on the east by 78°49.95' W. long.; and on the west by 78°51.45' W. long.

(xxxiii) *North Inlet 45 Foot Reef* is bounded on the north by 33°21.03' N. lat.; on the south by 33°20.03' N. lat.; on the east by 79°00.31' W. long.; and on the west by 79°01.51' W. long.

(xxxiv) *CJ Davidson Reef* is bounded on the north by 33°06.48' N. lat.; on the south by 33°05.48' N. lat.; on the east by 79°00.27' W. long.; and on the west by 79°01.39' W. long.

(xxxv) *Greenville Reef* is bounded on the north by 32°57.25' N. lat.; on the south by 32°56.25' N. lat.; on the east by 78°54.25' W. long.; and on the west by 78°55.25' W. long.

(xxxvi) *Charleston 60 Foot Reef* is bounded on the north by 32°33.60' N. lat.; on the south by 32°32.60' N. lat.; on the east by 79°39.70' W. long.; and on the west by 79°40.90' W. long.

(xxxvii) *Edisto 60 Foot Reef* is bounded on the north by 32°21.75' N. lat.; on the south by 32°20.75' N. lat.; on the east by 80°04.10' W. longitude; and on the west by 80°05.70' W. long.

(xxxviii) *Edisto 40 Foot Reef* is bounded on the north by 32°25.78' N. lat.; on the south by 32°24.78' N. lat.; on the east by 80°11.24' W. long.; and on the west by 80°12.32' W. long.

(xxxix) *Beaufort 45 Foot Reef* is bounded on the north by 32°07.65' N. lat.; on the south by 32°06.65' N. lat.; on the east by 80°28.80' W. long.; and on the west by 80°29.80' W. long.

(2) The use of a sea bass pot or a bottom longline is prohibited in each of the SMZs. The following additional restrictions apply in the indicated SMZs:

(i) In the SMZs specified in paragraphs (e)(1)(i) through (e)(1)(xviii) and (e)(1)(xxii) through (e)(1)(xxxix) of this section, the use of a gillnet or a trawl is prohibited, and fishing may be conducted only with handline, rod and reel, and spearfishing gear.

(ii) In SMZs specified in paragraphs (e)(1) (xix) and (xx) of this section, a hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.

(iii) In the SMZs specified in paragraphs (e)(1) (xix) and (xxi) of this section, the use of spearfishing gear is prohibited.

(iv) In the SMZs specified in paragraphs (e)(1)(i) through (e)(1)(x), (e)(1)(xx), and (e)(1)(xxii) through (e)(1)(xxxix) of this section, a powerhead may not be used to take South Atlantic snapper-grouper. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in one of the specified SMZs, or after having fished in one of the SMZs, constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ.

(f) *Golden crab trap closed areas.* In the golden crab northern zone, a golden crab trap may not be deployed in waters less than 900 ft (274 m) deep. In the golden crab middle and southern zones, a golden crab trap may not be deployed in waters less than 700 ft (213 m) deep. See § 622.17(b) for specification of the golden crab zones.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 61 FR 47449, Sept. 9, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 63 FR 71794, Dec. 30, 1998; 65 FR 37295, June 14, 2000]

§ 622.36 Seasonal harvest limitations.

(a) *Gulf EEZ.* During March, April, and May, each year, the possession of greater amberjack in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such greater amberjack were

harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(i) and (b)(2), respectively, and such greater amberjack are subject to the prohibition on sale or purchase of greater amberjack possessed under the bag limit, as specified in § 622.45(c)(1).

(b) *South Atlantic EEZ*—(1) *Greater amberjack spawning season.* During April, each year, the possession of greater amberjack in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such greater amberjack are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(6).

(2) *Mutton snapper spawning season.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person per day or 10 per person per trip, whichever is more restrictive.

(3) *Wreckfish spawning-season closure.* From January 15 through April 15, each year, no person may harvest or possess on a fishing vessel wreckfish in or from the EEZ; offload wreckfish from the EEZ; or sell or purchase wreckfish in or from the EEZ. The prohibition on sale or purchase of wreckfish does not apply to trade in wreckfish that were harvested, offloaded, and sold or purchased prior to January 15 and were held in cold storage by a dealer or processor.

(4) *Black grouper and gag.* During March and April, each year, the possession of black grouper and gag in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such black grouper or gag were harvested, is limited to two black grouper or gag, combined, per person per day or two black grouper or gag, combined, per person per trip, whichever is more restrictive. Such black grouper or gag are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

(5) *Red porgy.* During January, February, March, and April, each year, the harvest or possession of red porgy in or from the South Atlantic EEZ, and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such red porgy are subject to the prohibition on sale or puchase, as specified in § 622.45(d)(5).

[61 FR 34934, July 3, 1996, as amended at 62 FR 67723, Dec. 30, 1997; 64 FR 3627, Jan. 25, 1999; 65 FR 51252, Aug. 23, 2000]

§ 622.37 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (c)(3) of this section, a fish not in compliance with its size limit, as specified in this section, in or from the Caribbean, Gulf, South Atlantic, and/or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

(a) *Caribbean reef fish:* Yellowtail snapper—12 inches (30.5 cm), TL.

(b) *Caribbean spiny lobster*—3.5 inches (8.9 cm), carapace length.

(c) *Coastal migratory pelagic fish.* (1) Cobia in the Gulf, Mid-Atlantic, or South Atlantic—33 inches (83.8 cm), fork length.

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

(3) Spanish mackerel in the Gulf, South Atlantic, or Mid-Atlantic—12 inches (30.5 cm), fork length, except that a vessel fishing under a quota for Spanish mackerel specified in § 622.42(c)(2) may possess undersized Spanish mackerel in quantities not exceeding 5 percent, by weight, of the Spanish mackerel on board.

(d) *Gulf reef fish*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—10 inches (25.4 cm), TL.

(iii) Cubera, dog, gray, mahogany, and yellowtail snappers and schoolmaster—12 inches (30.5 cm), TL.

(iv) Red snapper—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(iii) and 15 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

(v) Mutton snapper—16 inches (40.6 cm), TL.

(2) *Grouper.* (i) Scamp—16 inches (40.6 cm), TL.

(ii) Red grouper and yellowfin grouper—20 inches (50.8 cm), TL.

(iii) Black grouper and gag—(A) For a person not subject to the bag limit specified in § 622.39(b)(1)(ii)—24 inches (61.0 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—22 inches (55.9 cm), TL.

(3) *Other Gulf reef fish species.* (i) Gray triggerfish—12 inches (30.5 cm), TL.

(ii) Hogfish—12 inches (30.5 cm), fork length.

(iii) Banded rudderfish and lesser amberjack—14 inches (35.6 cm), fork length (minimum size); 22 inches (55.9 cm), fork length (maximum size).

(iv) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i); and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(e) *South Atlantic snapper-grouper*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—11 inches (27.9 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (d)(1)(v) and 12 inches (30.5 cm), TL, for a fish taken by a person not subject to the bag limit.

(iii) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers; and schoolmaster—12 inches (30.5 cm), TL.

(iv) Mutton snapper—16 inches (40.6 cm), TL.

(v) Red snapper—20 inches (50.8 cm), TL.

(2) *Grouper.* (i) Red, yellowfin, and yellowmouth grouper; and scamp—20 inches (50.8 cm), TL.

(ii) Black grouper and gag—24 inches (61.0 cm), TL.

(3) *Other snapper-grouper species.* (i) Black sea bass—10 inches (25.4 cm), TL.

(ii) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(iii) Hogfish—12 inches (30.5 cm), fork length.

(iv) Red porgy—14 inches (35.6 cm), TL.

(v) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(f) *Gulf shrimp.* White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

(g) *Caribbean queen conch*—9 inches (22.9 cm) in length, that is, from the tip of the spire to the distal end of the shell, and ⅜ inch (9.5 mm) in lip width at its widest point. A queen conch with a length of at least 9 inches (22.9 cm) or a lip width of at least ⅜ inch (9.5 mm) is not undersized.

[61 FR 34934, July 3, 1996, as amended at 61 FR 65483, Dec. 13, 1996; 62 FR 13988, Mar. 25, 1997; 63 FR 444, Jan. 6, 1998; 63 FR 10567, Mar. 4, 1998; 64 FR 3628, Jan. 25, 1999; 64 FR 45459, Aug. 20, 1999; 64 FR 57404, Oct. 25, 1999; 65 FR 31831, May 19, 2000; 65 FR 50162, Aug. 17, 2000]

§ 622.38 Landing fish intact.

The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(a) The following must be maintained with head and fins intact: Cobia, king mackerel, and Spanish mackerel in or

from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

(b) A Caribbean spiny lobster in or from the Caribbean EEZ must be maintained with head and carapace intact.

(c) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (a) of this section.

(d) In the Gulf EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact.

(i) For the purpose of this paragraph (d)(1), bait means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in^3 (7.6 cm^3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (d)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

(e) A golden crab in or from the South Atlantic EEZ must be maintained in whole condition through landing ashore. For the purposes of this paragraph, whole means a crab that is in its natural condition and that has not been gutted or separated into component pieces, e.g., clusters.

(f) A Caribbean conch resource in or from the Caribbean EEZ must be maintained with meat and shell intact.

(g) Cut-off (damaged) king or Spanish mackerel that comply with the minimum size limits in § 622.37(c)(2) and (c)(3), respectively, and the trip limits in § 622.44(a) and (b), respectively, may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective trip limits. Such cut-off fish also may be sold. A maximum of five additional cut-off (damaged) king mackerel, not subject to the size limits or trip limits, may be possessed or offloaded ashore but may not be sold or purchased and are not counted against the trip limit.

(h) In the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ. For the purpose of this paragraph (i), a vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 61 FR 65483, Dec. 13, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 38303, July 16, 1998; 64 FR 3628, Jan. 25, 1999; 65 FR 16340, Mar. 28, 2000]

§ 622.39 Bag and possession limits.

(a) *Applicability*. (1) The bag and possession limits apply for species/species groups listed in this section in or from the EEZ. Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip. The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person aboard a vessel in the EEZ that has on board the commercial vessel permit required under § 622.4(a)(2) for the appropriate species/species group. However, see

§ 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits. The possession of a commercial vessel permit notwithstanding, the bag and possession limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in this section with a bag or possession limit applicable to state waters. A species/species group subject to a bag limit specified in this section taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ. The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in this section are not exceeded.

(2) Paragraph (a)(1) of this section notwithstanding, bag and possession limits also apply for Gulf reef fish in or from the EEZ to a person aboard a vessel that has on board a commercial permit for Gulf reef fish—

(i) When trawl gear or entangling net gear is on board. A vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(ii) When a longline or buoy gear is on board and the vessel is fishing or has fished on a trip in the reef fish longline and buoy gear restricted area specified in § 622.34(c). A vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

(iii) For a species/species group when its quota has been reached and closure has been effected.

(iv) When the vessel has on board or is tending any trap other than a fish trap authorized under § 622.40(a)(2), a stone crab trap, or a spiny lobster trap.

(3) Paragraph (a)(1) of this section notwithstanding, the bag and other limits specified in § 622.35(b) apply for South Atlantic snapper-grouper in or from the EEZ to a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued that has on board a longline in the longline closed area.

(b) *Gulf reef fish*—(1) *Bag limits.* (i) Greater amberjack—1.

(ii) Groupers, combined, excluding jewfish and Nassau grouper—5 per person per day, but not to exceed 1 speckled hind and 1 Warsaw grouper per vessel per day.

(iii) Red snapper—4.

(iv) Snappers, combined, excluding red, lane, and vermilion snapper—10.

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch—20.

(vi) Banded rudderfish and lesser amberjack, combined—5.

(vii) Hogfish—5.

(2) *Possession limits.* A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(c) *King and Spanish mackerel*—(1) *Bag limits.* (i) Atlantic migratory group king mackerel—

(A) Mid-Atlantic and South Atlantic, other than off Florida—3.

(B) Off Florida—2, which is the daily bag limit specified by Florida for its waters (Rule 46–12.004(1), Florida Administrative Code). If Florida changes its limit, the bag limit specified in this paragraph (c)(1)(i)(B) will be changed to conform to Florida's limit, provided such limit does not exceed 5.

(ii) Gulf migratory group king mackerel—2, except that for an operator or crew member of a charter vessel or headboat, the bag limit is 0.

(iii) Atlantic migratory group Spanish mackerel—15.

(iv) Gulf migratory group Spanish mackerel—15.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *South Atlantic snapper-grouper*—(1) *Bag limits.* (i) Greater amberjack—1.

(ii) Groupers, combined, excluding jewfish and Nassau grouper, and tilefishes—5. However, within the 5-fish aggregate bag limit, no more than two fish may be gag or black grouper, combined.

(iii) Hogfish in the South Atlantic off Florida—5.

(iv) Snappers, combined, excluding cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and excluding vermilion snapper—10, of which no more than 2 may be red snapper. (See § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(v) Vermilion snapper—10.

(vi) Red porgy—1.

(vii) Black sea bass—20.

(viii) South Atlantic snapper-grouper, combined, excluding tomtate and blue runner and those specified in paragraphs (d)(1)(i) through (vii) of this section—20.

(2) *Possession limits.* (i) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(A) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits of species other than red porgy.

(B) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits of species other than red porgy.

(ii) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of one per day or one per trip, whichever is more restrictive.

(3) *Longline bag limits.* Other provisions of this paragraph (d) notwithstanding, a person on a trip aboard a vessel for which the bag limits apply that has a longline on board is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in paragraph (d)(1) of this section, and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph (d)(3), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(e) *Caribbean queen conch*—(1) *Applicability.* Paragraph (a)(1) of this section notwithstanding, the bag limit of paragraph (e)(2) of this section does not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands. See § 622.44 for the commercial daily trip limit.

(2) *Bag limit.* The bag limit for queen conch in or from the Caribbean EEZ is 3 per person or, if more than 4 persons are aboard, 12 per boat.

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§ 622.40 Limitations on traps and pots.

(a) *Tending*—(1) *Caribbean EEZ.* A fish trap or Caribbean spiny lobster trap in the Caribbean EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap or spiny lobster trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code.

An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(2) *Gulf EEZ.* A fish trap in the Gulf EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel with the fish trap endorsement to fish such trap. If such vessel has a breakdown that prevents it from retrieving its traps, the owner or operator must immediately notify the nearest NMFS Office of Enforcement and must obtain authorization for another vessel to retrieve and land its traps. The request for such authorization must include the requested effective period for the retrieval and landing, the persons and vessel to be authorized to retrieve the traps, and the point of landing of the traps. Such authorization will be specific as to the effective period, authorized persons and vessel, and point of landing. Such authorization is valid solely for the removal of fish traps from the EEZ and for harvest of fish incidental to such removal.

(3) *South Atlantic EEZ.* A sea bass pot or golden crab trap in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted. For golden crab only, a vessel with written consent on board must also possess a valid commercial vessel permit for golden crab.

(b) *Escape mechanisms*—(1) *Caribbean EEZ.* (i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on each of two sides of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by a panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of a panel may not be smaller than the mesh size of the trap. A panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛ inch (3.2 mm). An access door may serve as one of the panels, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding ⅛ inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(ii) A spiny lobster trap used or possessed in the Caribbean EEZ must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding ⅛ inch (3.2 mm). This includes, but is not limited to tyre palm, hemp, jute, cotton, wool, or silk.

(B) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16 inch (1.6 mm), that is, 16 gauge wire.

(2) *Gulf EEZ.* A fish trap used or possessed in the Gulf EEZ must have at least two escape windows on each of two sides, excluding the bottom (a total of four escape windows), that are 2 by 2 inches (5.1 by 5.1 cm) or larger. In addition, a fish trap must have a panel or access door located opposite each side of the trap that has a funnel. The opening covered by each panel or access door must be 144 in^2 (929 cm^2) or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches (15.2 cm). The hinges and fasteners of each panel or access door must be constructed of one of the following degradable materials:

(i) Untreated jute string with a diameter not exceeding 3/16 inch (4.8 mm) that is not wrapped or overlapped.

(ii) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *South Atlantic EEZ.* (i) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.3′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have—

(A) On at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each

panel or door must be made of one of the following degradable materials:

(*1*) Ungalvanized or uncoated iron wire with a diameter not exceeding 0.041 inches (1.0 mm), that is, 19 gauge wire.

(*2*) Galvanic timed-release mechanisms with a letter grade designation (degradability index) no higher than J.

(B) An unobstructed escape vent opening on at least two opposite vertical sides, excluding top and bottom. The minimum dimensions of an escape vent opening (based on inside measurement) are:

(*1*) 1⅛ by 5¾ inches (2.9 by 14.6 cm) for a rectangular vent.

(*2*) 1.75 by 1.75 inches (4.5 by 4.5 cm) for a square vent.

(*3*) 2.0-inch (5.1-cm) diameter for a round vent.

(ii) A golden crab trap that is used or possessed in the South Atlantic EEZ must have at least one escape gap or escape ring on each of two opposite vertical sides. The minimum allowable inside dimensions of an escape gap are 2.75 by 3.75 inches (7.0 by 9.5 cm); the minimum allowable inside diameter of an escape ring is 4.5 inches (11.4 cm). In addition to the escape gaps—

(A) A golden crab trap constructed of webbing must have an opening (slit) at least 1 ft (30.5 cm) long that may be closed (relaced) only with untreated cotton string no larger than 3⁄16 inch (0.48 cm) in diameter.

(B) A golden crab trap constructed of material other than webbing must have an escape panel or door measuring at least 12 by 12 inches (30.5 by 30.5 cm), located on at least one side, excluding top and bottom. The hinges or fasteners of such door or panel must be made of either ungalvanized or uncoated iron wire no larger than 19 gauge (0.04 inch (1.0 mm) in diameter) or untreated cotton string no larger than 3⁄16 inch (4.8 mm) in diameter.

(c) *Construction requirements and mesh sizes*—(1) *Caribbean EEZ.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ, must have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(2) *Gulf EEZ.* A fish trap used or possessed in the Gulf EEZ must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands):

(i) A minimum of 2 in^2 (12.9 cm^2) opening for each mesh.

(ii) One-inch (2.5-cm) minimum length for the shortest side.

(iii) Minimum distance of 1 inch (2.5 cm) between parallel sides of rectangular openings, and 1.5 inches (3.8 cm) between parallel sides of square openings and of mesh openings with more than four sides.

(iv) One and nine-tenths inches (4.8 cm) minimum distance for diagonal measures of mesh.

(3) *South Atlantic EEZ.* (i) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(A) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(B) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(C) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(ii) A golden crab trap deployed or possessed in the South Atlantic EEZ may not exceed 64 ft^3 (1.8 m^3) in volume in the northern zone or 48 ft^3 (1.4 m^3) in volume in the middle and southern zones. See § 622.17(b) for specification of the golden crab zones.

(d) *Area-specific restrictions*—(1) *Gulf EEZ.* In the Gulf EEZ, a fish trap may be pulled or tended only from official sunrise to official sunset. The operator of a vessel from which a fish trap is deployed in the Gulf EEZ must retrieve all the vessel's fish traps and return them to port on each trip. A fish trap that is not returned to port on a trip, and its attached line and buoy, may be disposed of in any appropriate manner by the Assistant Administrator or an

authorized officer. The owner of such trap and/or the operator of the responsible vessel is subject to appropriate civil penalties. A buoy that floats on the surface must be attached to each fish trap, or to each end trap of traps that are connected by a line, used in the Gulf EEZ. The maximum allowable size for a fish trap fished in the Gulf EEZ shoreward of the 50-fathom (91.4-m) isobath is 33 ft^3 (0.9 m^3) in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom (91.4-m) isobath. The maximum number of traps that may be assigned to, possessed, or fished in the Gulf EEZ by a vessel is 100.

(2) *South Atlantic EEZ.* (i) In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a ''trawl'' or trot line.

(ii) Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap, except that wire cable is allowed for a mainline through December 31, 2000.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 62 FR 13988, Mar. 25, 1997; 63 FR 10568, Mar. 4, 1998; 63 FR 38303, July 16, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 3628, Jan. 25, 1999]

§ 622.41 Species specific limitations.

(a) *Aquacultured live rock.* In the Gulf or South Atlantic EEZ:

(1) Aquacultured live rock may be harvested only under a permit, as required under § 622.4(a)(3)(iii), and aquacultured live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site. A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(2) The following restrictions apply to individual aquaculture activities:

(i) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(ii) Material deposited on the aquaculture site—

(A) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.

(B) Must be free of contaminants.

(C) Must be nontoxic.

(D) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely.

(E) Must be placed from a vessel that is anchored.

(F) In the Gulf EEZ, must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate.

(G) In the South Atlantic EEZ, must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

(iii) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(3) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand. In addition, the following activities are prohibited in the South Atlantic: Chipping of aquacultured live rock in the EEZ, possession of chipped aquacultured live rock in or from the EEZ, removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ, and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the definition of ''Allowable octocoral'' for clarification of the distinction between allowable octocoral and live rock. For the purposes of this paragraph (a)(3), chipping means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

(4) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting

vessel must provide the following information to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 570–5344:

(i) Permit number of site to be harvested and date of harvest.

(ii) Name and official number of the vessel to be used in harvesting.

(iii) Date, port, and facility at which aquacultured live rock will be landed.

(b) *Caribbean reef fish.* A marine aquarium fish may be harvested in the Caribbean EEZ only by a hand-held dip net or by a hand-held slurp gun. For the purposes of this paragraph, a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber, and a marine aquarium fish is a Caribbean reef fish that is smaller than 5.5 inches (14.0 cm), TL.

(c) *Coastal migratory pelagic fish*—(1) *Authorized gear.* Subject to the prohibitions on gear/methods specified in § 622.31, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ in directed fisheries for coastal migratory pelagic fish:

(i) King mackerel, Atlantic migratory group—

(A) North of 34°37.3' N. lat., the latitude of Cape Lookout Light, NC—all gear except drift gillnet and long gillnet.

(B) South of 34°37.3' N. lat.—automatic reel, bandit gear, handline, and rod and reel.

(ii) King mackerel, Gulf migratory group—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.42(c)(1)(i)(A)(*3*) for a description of the southern Florida west coast subzone.)

(iii) Spanish mackerel, Atlantic migratory group—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

(iv) Spanish mackerel, Gulf migratory group—all gear except drift gillnet, long gillnet, and purse seine.

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ, dolphin in the South Atlantic EEZ, and little tunny in the South Atlantic EEZ south of 34°37.3' N. lat.—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(vi) Cero in the South Atlantic EEZ and little tunny in the South Atlantic EEZ north of 34°37.3' N. lat.—all gear except drift gillnet and long gillnet.

(vii) Bluefish, cero, cobia, dolphin, and little tunny in the Gulf EEZ—all gear except drift gillnet and long gillnet.

(2) *Unauthorized gear.* Gear types other than those specified in paragraph (c)(1) of this section are unauthorized gear and the following possession limitations apply:

(i) *Long gillnets.* A vessel with a long gillnet on board in, or that has fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ may not have on board on that trip a coastal migratory pelagic fish.

(ii) *Drift gillnets.* A vessel with a drift gillnet on board in, or that has fished on a trip in, the Gulf EEZ may not have on board on that trip a coastal migratory pelagic fish.

(iii) *Other unauthorized gear.* Except as specified in paragraph (c)(2)(iv) of this section, a person aboard a vessel with unauthorized gear other than a drift gillnet in the Gulf EEZ or a long gillnet on board in, or that has fished in, the EEZ where such gear is not authorized in paragraph (c)(1) of this section, is subject to the bag limit for king and Spanish mackerel specified in § 622.39(c)(1)(ii) and to the limit on cobia specified in § 622.32(c)(1).

(iv) *Exception for king mackerel in the Gulf EEZ.* The provisions of this paragraph (c)(2)(iv) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (c)(2)(iii) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(A) Such vessel may not use unauthorized gear in a directed fishery for king mackerel in the Gulf EEZ.

(B) If such a vessel has a drift gillnet or a long gillnet on board or a run-

around gillnet in an area other than the southern Florida west coast subzone, no king mackerel may be possessed.

(C) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone, the possession of king mackerel taken incidentally is restricted only by the closure provisions of § 622.43(a)(3) and the trip limits specified in § 622.44(a). See also paragraph (c)(4) of this section regarding the purse seine incidental catch allowance of king mackerel.

(3) *Gillnets*—(i) *King mackerel.* The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for king mackerel is 4.75 inches (12.1 cm), stretched mesh. A vessel in such EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 4.75 (12.1 cm) inches, stretched mesh, may not possess on that trip an incidental catch of king mackerel that exceeds 10 percent, by number, of the total lawfully possessed Spanish mackerel on board.

(ii) *Spanish mackerel.* (A) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(*1*) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(*2*) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

(B) On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4' N. lat., which is a line directly east from the Miami–Dade/Monroe County, FL, boundary—

(*1*) No person may fish with, set, place in the water, or have on board a gillnet with a float line longer than 800 yd (732 m).

(*2*) No person may fish with, set, or place in the water more than one gillnet at any one time.

(*3*) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm).

(*4*) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water.

(*5*) The float line of each gillnet possessed, including any net in use, must have the distinctive floats specified in § 622.6(b)(2).

(4) *Purse seine incidental catch allowance.* A vessel in the EEZ, or having fished in the EEZ, with a purse seine on board will not be considered as fishing, or having fished, for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (c)(2) of this section, in violation of the possession limits under paragraph (c)(2)(iii) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 622.43(a), provided the king mackerel on board does not exceed 1 percent, or the Spanish mackerel on board does not exceed 10 percent, of all fish on board the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.42(c) and are subject to the prohibition of sale under § 622.43(a)(3)(iii).

(d) *South Atlantic snapper-grouper*—(1) *Authorized gear.* Subject to the gear restrictions specified in § 622.31, the following are the only gear types authorized in a directed fishery for snapper-grouper in the South Atlantic EEZ: Bandit gear, bottom longline, buoy gear, handline, rod and reel, sea bass pot, and spearfishing gear.

(2) *Unauthorized gear.* All gear types other than those specified in paragraph (d)(1) of this section are unauthorized gear and the following possession and transfer limitations apply.

(i) A vessel with trawl gear on board that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, on board harvested such fish in the EEZ.

(ii) Except as specified in paragraphs (d)(3) through (d)(5) of this section, a person aboard a vessel with unauthorized gear on board, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) South Atlantic snapper-grouper species for which a bag limit is specified in § 622.39(d)(1)—the bag limit.

(B) All other South Atlantic snapper-grouper—zero.

(iii) South Atlantic snapper-grouper on board a vessel with unauthorized gear on board may not be transferred at sea, regardless of where such transfer takes place, and such snapper-grouper may not be transferred in the EEZ.

(iv) No vessel may receive at sea any South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in paragraph (d)(2)(iii) of this section.

(3) *Possession allowance regarding sink nets off North Carolina.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina with a sink net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(3), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

(4) *Possession allowance regarding bait nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with no more than one bait net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(4), a bait net is a gillnet not exceeding 50 ft (15.2 m) in length or 10 ft (3.1 m) in height with stretched mesh measurements of 1.5 inches (3.8 cm) or smaller that is attached to the vessel when deployed.

(5) *Possession allowance regarding cast nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with a cast net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(5), a cast net is a cone-shaped net thrown by hand and designed to spread out and capture fish as the weighted circumference sinks to the bottom and comes together when pulled by a line.

(6) *Longline species limitation.* A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ on a trip with a longline on board, may possess only the following South Atlantic snapper-grouper: snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery on any reel, and gangions are on board. Removal of any one of these

three elements constitutes removal of a longline.

(e) *South Atlantic golden crab.* Traps are the only fishing gear authorized in directed fishing for golden crab in the South Atlantic EEZ. Golden crab in or from the South Atlantic EEZ may not be retained on board a vessel possessing or using unauthorized gear.

(f) *Caribbean queen conch.* In the Caribbean EEZ, no person may harvest queen conch by diving while using a device that provides a continuous air supply from the surface.

(g) *Shrimp in the South Atlantic*—(1) *BRD requirement.* Except as exempted in paragraph (g)(3)(ii) of this section, on a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed. A trawl net, or try net, is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(2) *Certified BRDs.* The following BRDs are certified for use by penaeid shrimp trawlers in the South Atlantic EEZ. Specifications of these certified BRDs are contained in Appendix D of this part.

(i) Extended funnel.

(ii) Expanded mesh.

(iii) Fisheye.

(3) *Certification of BRDs*—(i) A person who seeks to have a BRD certified for use in the South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit to the RA the results of the test conducted and recorded in accordance with the Testing Protocol for BRD Certification, which along with forms and procedures, is included in the *Bycatch Reduction Device Testing Protocol Manual* which is available from the SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, and from the RA. A BRD that meets the certification criterion, as determined under the Testing Protocol for BRD Certification, will be added to the list of certified BRDs in paragraph (g)(2) of this section.

(ii) A penaeid shrimp trawler that is authorized to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the Testing Protocol for BRD Certification is granted a limited exemption from the BRD requirement specified in paragraph (g)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

(h) *Shrimp in the Gulf*—(1) *BRD requirement.* (i) Except as exempted in paragraphs (h)(1)(ii) through (iv) and paragraph (h)(3)(iii) of this section, on a shrimp trawler in the Gulf EEZ shoreward of the 100-fathom (183-m) depth contour west of 85°30' W. long., each net that is rigged for fishing must have a certified BRD installed. A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(ii) A shrimp trawler is exempt from the requirement to have a certified BRD installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler are royal red shrimp.

(iii) A shrimp trawler is exempt from the requirement to have a BRD installed in a single try net with a headrope length of 16 ft (4.9 m) or less provided the single try net is either pulled immediately in front of another net or is not connected to another net.

(iv) A shrimp trawler is exempt from the requirement to have a certified BRD installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any

obstruction while being towed; and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(2) *Certified BRDs.* The following BRDs are certified for use by shrimp trawlers in the Gulf EEZ. Specifications of these certified BRDs are contained in Appendix D to this part.

(i) Fisheye.

(ii) Gulf fisheye.

(iii) Jones-Davis.

(3) *Procedures for certification of additional BRDs.* The process for the certification of additional BRDs consists of two phases—an optional pre-certification phase and a required certification phase.

(i) *Pre-certification.* The pre-certification phase allows a person to test and evaluate a new BRD design for up to 60 days without being subject to the observer requirements and rigorous testing requirements specified for certification testing in the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual.*

(A) A person who wants to conduct pre-certification phase testing must submit an application, as specified in the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual,* to the RA. The *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual,* which is available from the RA, upon request, contains the application forms.

(B) After reviewing the application, the RA will determine whether to issue a letter of authorization (LOA) to conduct pre-certification trials upon the vessel specified in the application. The RA will issue a pre-certification phase LOA if the BRD design is substantially unlike any BRD design previously determined not to meet the BRD certification criterion or, if the design is substantially similar to a BRD design previously determined not to meet the BRD certification criteria, and the application demonstrates that the design could meet the certification criterion through design revision or upon retesting (e.g., the application shows that statistical results could be improved upon retesting by such things as using a larger sample size than that previously used). If the RA authorizes pre-certification, the RA's letter of authorization must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification.* A person who proposes a BRD for certification for use in the Gulf EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual.* The RA will issue a LOA to conduct certification trials upon the vessel specified in the application if the RA finds that: The test plan meets the requirements of the protocol; the observer identified in the application is qualified and has no current or prior financial relationship with the entity seeking BRD certification; the application presents a BRD candidate substantially unlike BRDs previously determined not to meet the current bycatch reduction criterion, or the applicant has shown good cause for reconsideration (such as the likelihood of improved statistical results yielded from a larger sample size than that previously used); and for BRDs not previously tested for certification, the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If authorization to conduct certification trials is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. If a BRD meets the certification criterion, as determined under the testing protocol, NMFS will publish a notice in the FEDERAL REGISTER adding the BRD to the list of certified BRDs in paragraph (h)(2) of this section providing the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(iii) A shrimp trawler that is authorized to participate in the pre-certification phase or to test a BRD in the EEZ for possible certification has such written authorization on board and is conducting such test in accordance with the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual* is granted a limited exemption from the

BRD requirement specified in paragraph (h)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

(i) *Gulf reef fish exhibiting trap rash.* Gulf reef fish in or from the Gulf EEZ that exhibit trap rash may be possessed on board a vessel only if that vessel has a valid fish trap endorsement, as required under § 622.4(a)(2)(i), on board. Possession of such fish on board a vessel without a valid fish trap endorsement is prima facie evidence of illegal trap use and is prohibited. For the purpose of this paragraph, trap rash is defined as physical damage to fish that characteristically results from contact with wire fish traps. Such damage includes, but is not limited to, broken fin spines, fin rays, or teeth; visually obvious loss of scales; and cuts or abrasions on the body of the fish, particularly on the head, snout, or mouth.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 61 FR 65484, Dec. 13, 1996; 62 FR 18539, Apr. 16, 1997; 63 FR 10568, Mar. 4, 1998; 63 FR 18144, Apr. 14, 1998; 63 FR 38303, July 16, 1998; 64 FR 3628, Jan. 25, 1999; 64 FR 36781, July 8, 1999; 64 FR 37694, July 13, 1999; 64 FR 43941, Aug. 12, 1999; 64 FR 45459, Aug. 20, 1999; 64 FR 52428, Sept. 29, 1999; 64 FR 59126, Nov. 2, 1999; 64 FR 68935, Dec. 9, 1999; 65 FR 16340, Mar. 28, 2000; 65 FR 52957, Aug. 31, 2000]

EFFECTIVE DATE NOTE: At 65 FR 52957, Aug. 31, 2000, § 622.41 was amended in paragraph (c)(3)(ii)(B), by removing the word ''Dade'' and adding in its place ''Miami-Dade'', effective Oct. 2, 2000.

§ 622.42 Quotas.

Quotas apply for the fishing year for each species or species group. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ. Quotas for species managed under this part are as follows. (See § 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits.)

(a) *Gulf reef fish*—(1) *Commercial quotas.* The following quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(i) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned as follows:

(A) Two-thirds of the quota specified in § 622.42(a)(1)(i), 3.10 million lb (1.41 million kg), available at noon on February 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(B) The remainder available at noon on October 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined—1.60 million lb (0.73 million kg), round weight.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined—9.80 million lb (4.45 million kg), round weight.

(2) *Recreational quota for red snapper.* The following quota applies to persons who harvest red snapper other than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(i) of this section—4.47 million lb (2.03 million kg), round weight.

(3) Shallow-water groupers, that is, all groupers other than deep-water groupers, jewfish, and Nassau grouper, including scamp before the quota for shallow-water groupers is reached, combined—9.8 million lb (4.4 million kg), round weight.

(b) *Gulf and South Atlantic allowable octocoral.* The quota for all persons who harvest allowable octocoral in the EEZ of the Gulf and South Atlantic is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

(c) *King and Spanish mackerel.* King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv). A fish is counted against the

quota for the area where it is caught when it is first sold.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group*. The quota for the Gulf migratory group of king mackerel is 3.39 million lb (1.54 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31'06'' W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone*—2.34 million lb (1.06 million kg), which is further divided into quotas as follows:

(*1*) *Florida east coast subzone*—1,082,250 lb (490,900 kg).

(*2*) *Florida west coast subzones*—(*i*) *Southern*—1,082,250 lb (490,900 kg), which is further divided into a quota of 541,125 lb (245,450 kg) for vessels fishing with hook-and-line and a quota of 541,125 lb (245,450 kg) for vessels fishing with run-around gillnets.

(*ii*) *Northern*—175,500 lb (79,606 kg).

(*3*) *Description of Florida subzones*. The Florida east coast subzone is that part of the eastern zone north of 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat., a line directly west from the Lee/Collier County, FL boundary (i.e., the area off Collier and Monroe Counties). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary (i.e., off Collier County). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 87°31'06'' W. long., which is a line directly south from the Alabama/Florida boundary.

(*B*) *Western zone*—1.05 million lb (0.48 million kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of king mackerel is 3.71 million lb (1.68 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group*. The quota for the Gulf migratory group of Spanish mackerel is 5.187 million lb (2.353 million kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 3.87 million lb (1.76 million kg).

(d) *Royal red shrimp in the Gulf*. The quota for all persons who harvest royal red shrimp in the Gulf is 392,000 lb (177.8 mt), tail weight.

(e) *South Atlantic snapper-grouper, excluding wreckfish*. The quotas apply to persons who are not subject to the bag limits. (See § 622.39(a)(1) for applicability of the bag limits.)

(1) *Snowy grouper*—344,508 lb (156,266 kg), gutted weight, that is, eviscerated but otherwise whole.

(2) *Golden tilefish*—1,001,663 lb (454,347 kg), gutted weight, that is, eviscerated but otherwise whole.

(3) *Greater amberjack*—1,169,931 lb (530,672 kg), gutted weight, that is, eviscerated but otherwise whole.

(f) *Wreckfish*. The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 2 million lb (907,185 kg), round weight. See § 622.15 for information on the wreckfish shareholder under the ITQ system.

[61 FR 34934, July 3, 1996, as amended at 61 FR 48643, Sept. 16, 1996; 62 FR 13988, Mar. 25, 1997; 62 FR 23674, May 1, 1997; 62 FR 46679, Sept. 4, 1997; 62 FR 67723, Dec. 30, 1997; 63 FR 8356, Feb. 19, 1998; 63 FR 10569, Mar. 4, 1998; 64 FR 3629, Jan. 25, 1999; 64 FR 45459, Aug. 20, 1999; 64 FR 59126, Nov. 2, 1999; 65 FR 16340, Mar. 28, 2000; 65 FR 30363, May 11, 2000; 65 FR 41016, July 3, 2000; 65 FR 50162, Aug. 17, 2000]

§ 622.43 Closures.

(a) *General*. When a quota specified in § 622.42 is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the following closure restrictions apply:

(1) *Gulf reef fish*—(i) *Commercial quotas.* The bag and possession limits specified in § 622.39(b) apply to all harvest or possession in or from the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero under paragraph (a)(1)(ii) of this section.

(ii) *Recreational quota for red snapper.* The bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(2) *Gulf and South Atlantic allowable octocoral.* Allowable octocoral may not be harvested or possessed in the Gulf EEZ or South Atlantic EEZ and the sale or purchase of allowable octocoral in or from the Gulf EEZ or South Atlantic EEZ is prohibited.

(3) *King and Spanish mackerel.* The closure provisions of this paragraph (a)(3) do not apply to Atlantic migratory group Spanish mackerel, which are managed under the commercial trip limits specified in § 622.44(b) in lieu of the closure provisions of this section.

(i) A person aboard a vessel for which a commercial permit for king or Spanish mackerel has been issued, as required under § 622.4(a)(2)(iii) or (iv), may not fish for king or Spanish mackerel in the EEZ or retain king or Spanish mackerel in or from the EEZ under a bag or possession limit specified in § 622.39(c) for the closed species, migratory group, zone, subzone, or gear, except as provided for under paragraph (a)(3)(ii) of this section.

(ii) A person aboard a vessel for which the permit indicates both charter vessel/headboat for coastal migratory pelagic fish and commercial king or Spanish mackerel may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

(iii) The sale or purchase of king or Spanish mackerel of the closed species, migratory group, zone, subzone, or gear type is prohibited, including such king or Spanish mackerel taken under the bag limits.

(4) *Royal red shrimp in the Gulf.* Royal red shrimp in or from the Gulf EEZ may not be retained, and the sale or purchase of royal red shrimp taken from the Gulf EEZ is prohibited.

(5) *South Atlantic snapper-grouper, excluding wreckfish*—(i) *Greater amberjack.* The bag limit specified in § 622.39(d)(1)(i) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of greater amberjack in or from the South Atlantic EEZ, and the sale or purchase of greater amberjack taken from the EEZ is prohibited. In addition, the bag and possession limits for greater amberjack and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested.

(ii) *Golden tilefish and snowy grouper.* Golden tilefish and snowy grouper, for which there are quotas, are managed under the commercial trip limits specified in § 622.44(c) in lieu of the closure provisions of this section.

(6) *Wreckfish.* Wreckfish in or from the South Atlantic EEZ may not be retained, and the sale or purchase of wreckfish taken from the South Atlantic EEZ is prohibited.

(b) *Exception to prohibition on sale/purchase.* (1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, greater amberjack, or wreckfish in paragraphs (a)(1), (a)(3)(iii), (a)(4), (a)(5)(i), or (a)(6) of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(2) The prohibition on sale/purchase during a closure for allowable octocoral in paragraph (a)(2) of this

section does not apply to allowable octocoral that was harvested and landed ashore prior to the effective date of the closure.

(c) *Reopening.* When a fishery has been closed based on a projection of the quota specified in § 622.42 being reached and subsequent data indicate that the quota was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the fishery to provide an opportunity for the quota to be reached.

[61 FR 34934, July 3, 1996, as amended at 62 FR 13988, Mar. 25, 1997; 62 FR 46679, Sept. 4, 1997; 62 FR 67723, Dec. 30, 1997; 63 FR 10569, Mar. 4, 1998; 64 FR 3629, Jan. 25, 1999; 64 FR 59126, Nov. 2, 1999]

§ 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights):

(a) *King mackerel*—(1) *Atlantic group.* The following trip limits apply to vessels for which commercial permits for king mackerel have been issued, as required under § 622.4(a)(2)(iii):

(i) North of 29°25' N. lat., which is a line directly east from the Flagler/Volusia County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(ii) In the area between 29°25' N. lat. and 28°47.8' N. lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(iii) In the area between 28°47.8′ N. lat. and 25°20.47′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 75 fish from April 1 through October 31.

(iv) In the area between 25°20.4' N. lat. and 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,250 lb (567 kg) from April 1 through October 31.

(2) *Gulf group.* Commercial trip limits are established in the eastern and western zones as follows. (See § 622.42(c)(1)(i) for specification of the eastern and western zones and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone-Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 50 fish per day.

(ii) *Eastern zone-Florida west coast subzone*—(A) *Gillnet gear.* (*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(p) or § 622.43(a).

(*2*) In the southern Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only

when such vessel has on board a commercial permit for king mackerel with a gillnet endorsement.

(*ii*) King mackerel from the southern west coast subzone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*i*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(B) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.4(a)(2)(iii), and operating under the hook-and-line gear quotas in § 622.42(c)(1)(i)(A)(*2*)(*i*) or (c)(1)(i)(A)(*2*)(*ii*):

(*1*) From July 1, each fishing year, until 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested, until a closure of the respective northern or southern subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

(iii) *Notice of trip limit changes.* The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section when the requisite harvest level has been reached or is projected to be reached.

(iv) *Western zone.* In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.43(a)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) *Spanish mackerel.* (1) Commercial trip limits are established for Atlantic migratory group Spanish mackerel as follows:

(i) North of 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), in amounts exceeding 3,500 lb (1,588 kg).

(ii) South of 30°42′45.6″ N. lat., Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(A) From April 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays through Fridays—unlimited.

(*2*) Saturdays and Sundays—not exceeding 1,500 lb (680 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,500 lb (680 kg).

(D) After 100 percent of the adjusted quota is taken through the end of the fishing year, in amounts not exceeding 500 lb (227kg).

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.62 million lb (1.64 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or is projected to be reached.

(3) For the purpose of paragraph (b)(1)(ii) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. If a vessel terminates a trip prior to 6 a.m., but retains Spanish

mackerel on board after that time, the Spanish mackerel retained on board will not be considered in possession during the succeeding day, provided the vessel is not underway between 6 a.m. and the time such Spanish mackerel are unloaded, and provided such Spanish mackerel are unloaded prior to 6 p.m.

(c) *South Atlantic snapper-grouper.* When a vessel fishes on a trip in the South Atlantic EEZ, the vessel trip limits specified in this paragraph (c) apply, provided persons aboard the vessel are not subject to the bag limits. See § 622.39(a) for applicability of the bag limits.

(1) *Trip-limited permits.* A vessel for which a trip-limited permit for South Atlantic snapper-grouper has been issued is limited to 225 lb (102.1 kg) of snapper-grouper.

(2) *Golden tilefish.* (i) Until the fishing year quota specified in § 622.42(e)(2) is reached, 5,000 lb (2,268 kg).

(ii) After the fishing year quota specified in § 622.42(e)(2) is reached, 300 lb (136 kg).

(3) *Snowy grouper.* (i) Until the fishing year quota specified in § 622.42(e)(1) is reached, 2,500 lb (1,134 kg).

(ii) After the fishing year quota specified in § 622.42(e)(1) is reached, 300 lb (136 kg).

(4) *Red porgy.* (i) From May 1 through December 31, 50 lb (22.7 kg).

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.36(b)(5) applies.

(5) *Greater amberjack.* Until the fishing year quota specified in § 622.42(e)(3) is reached, 1,000 lb (454 kg). See § 622.43(a)(5)(i) for the limitations regarding greater amberjack after the fishing year quota is reached.

(d) *Gulf red snapper.* (1) The trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish and a valid Class 1 red snapper license is 2,000 lb (907 kg), round or eviscerated weight.

(2) The trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish and a valid Class 2 red snapper license is 200 lb (91 kg), round or eviscerated weight.

(3) The trip limit for red snapper in or from the Gulf for any other vessel for which a commercial permit for Gulf reef fish has been issued is zero.

(4) As a condition of a commercial vessel permit for Gulf reef fish, as required under § 622.4(a)(2)(v), without regard to where red snapper are harvested or possessed, a vessel that has been issued such permit—

(i) May not possess red snapper in or from the Gulf in excess of the appropriate vessel trip limit, as specified in paragraphs (e)(1) through (3) of this section.

(ii) May not transfer or receive at sea red snapper in or from the Gulf.

(e) *Caribbean queen conch.* A person who fishes in the Caribbean EEZ and is not subject to the bag limit may not possess in or from the Caribbean EEZ more than 150 queen conch per day.

[61 FR 34934, July 3, 1996, as amended at 61 FR 48415, Sept. 13, 1996; 61 FR 48851, Sept. 17, 1996; 61 FR 65484, Dec. 13, 1996; 62 FR 23674, May 1, 1997; 62 FR 67723, Dec. 30, 1997; 63 FR 8356, Feb. 19, 1998; 63 FR 10569, Mar. 4, 1998; 63 FR 38303, July 16, 1998; 64 FR 45459, Aug. 20, 1999; 64 FR 59126, Nov. 2, 1999; 65 FR 16341, Mar. 28, 2000; 65 FR 30364, May 11, 2000; 65 FR 41016, July 3, 2000; 65 FR 51252, Aug. 23, 2000; 65 FR 55205, Sept. 13, 2000]

EFFECTIVE DATE NOTE: At 65 FR 55205, Sept. 13, 2000, § 622.44 was amended by adding paragraph (c)(5), effective Oct. 13, 2000.

§ 622.45 Restrictions on sale/purchase.

In addition to restrictions on sale/purchase related to closures, as specified in § 622.43 (a) and (b), restrictions on sale and/or purchase apply as follows.

(a) *Caribbean coral reef resource.* (1) No person may sell or purchase a Caribbean prohibited coral harvested in the Caribbean EEZ.

(2) A Caribbean prohibited coral that is sold in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the Caribbean EEZ, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual, harvesting the Caribbean prohibited coral.

(iii) The port and date of landing the Caribbean prohibited coral.

(iv) A statement signed by the person selling the Caribbean prohibited coral attesting that, to the best of his or her knowledge, information, and belief, such Caribbean prohibited coral was harvested other than in the Caribbean EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

(b) *Caribbean reef fish.* A live red hind or live mutton snapper in or from the Caribbean EEZ may not be sold or purchased and used in the marine aquarium trade.

(c) *Gulf reef fish.* (1) A Gulf reef fish harvested in the EEZ on board a vessel that does not have a valid commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), or a Gulf reef fish possessed under the bag limits specified in § 622.39(b), may not be sold or purchased.

(2) A Gulf reef fish harvested on board a vessel that has a valid commercial permit for Gulf reef fish may be sold only to a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4).

(3) A Gulf reef fish harvested in the EEZ may be purchased by a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for Gulf reef fish.

(4) From February 15 until March 15, each year, no person may sell or purchase a gag, black grouper, or red grouper harvested from the Gulf by a vessel with a valid Federal commercial permit for Gulf reef fish. This prohibition on sale/purchase does not apply to gag, black grouper, or red grouper that were harvested, landed ashore, and sold prior to February 15 and were held in cold storage by a dealer or processor.

(d) *South Atlantic snapper-grouper.* (1) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(2) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi), or from a person who has a valid commercial license to sell fish in the state where the purchase occurs.

(3) Except for the sale or purchase of South Atlantic snapper-grouper harvested by a vessel that has a valid commercial permit for South Atlantic snapper-grouper, the sale or purchase of such fish is limited to the bag limits specified in § 622.39(d)(1).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(5) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the red porgy;

(iii) The port and date of offloading from the vessel harvesting the red porgy; and

(iv) A statement signed by the dealer attesting that the red porgy was harvested from an area other than the South Atlantic.

(6) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued,

harvested from the South Atlantic. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the greater amberjack;

(iii) The port and date of offloading from the vessel harvesting the greater amberjack; and

(iv) A statement signed by the dealer attesting that the greater amberjack was harvested from an area other than the South Atlantic.

(7) During March and April, no person may sell or purchase a gag or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during March and April does not apply to gag or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of gag or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the gag or black grouper;

(iii) The port and date of offloading from the vessel harvesting the gag or black grouper; and

(iv) A statement signed by the dealer attesting that the gag or black grouper was harvested from an area other than the South Atlantic.

(e) *Gulf and South Atlantic wild live rock*. Wild live rock in or from the Gulf EEZ or South Atlantic EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock from the South Atlantic EEZ that was harvested and landed prior to January 1, 1996, or to wild live rock from the Gulf EEZ that was harvested and landed prior to January 1, 1997.

(f) *South Atlantic golden crab*. (1) A female golden crab in or from the South Atlantic EEZ may not be sold or purchased.

(2) A golden crab harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for golden crab, as required under § 622.4(a)(2)(x), may not be sold or purchased.

(3) A golden crab harvested on board a vessel that has a valid commercial permit for golden crab may be sold only to a dealer who has a valid permit for golden crab, as required under § 622.4(a)(4).

(4) A golden crab harvested in the South Atlantic EEZ may be purchased by a dealer who has a valid permit for golden crab, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for golden crab.

(g) *South Atlantic rock shrimp*. (1) Rock shrimp harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for rock shrimp, as required under § 622.4(a)(2)(viii), may not be transferred, received, sold, or purchased.

(2) Rock shrimp harvested on board a vessel that has a valid commercial permit for rock shrimp may be transferred or sold only to a dealer who has a valid permit for rock shrimp, as required under § 622.4(a)(4).

(3) Rock shrimp harvested in the South Atlantic EEZ may be received or purchased by a dealer who has a valid permit for rock shrimp, as required under § 622.4(a)(4), only from a vessel

that has a valid commercial permit for rock shrimp.

(h) *Cut-off (damaged) king or Spanish mackerel.* A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits specified in § 622.37(c)(2) or (c)(3), respectively, or that is in excess of the trip limits specified in § 622.44(a) or (b), respectively.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43960, Aug. 27, 1996; 61 FR 47449, Sept. 9, 1996; 63 FR 10569, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 3629, Jan. 25, 1999; 64 FR 59126, Nov. 2, 1999; 65 FR 16341, Mar. 28, 2000; 65 FR 31831, May 19, 2000; 65 FR 51253, Aug. 23, 2000]

§ 622.46 Prevention of gear conflicts.

(a) No person may knowingly place in the Gulf EEZ any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the FMP for the Shrimp Fishery of the Gulf of Mexico, the RA may modify or establish separation zones for shrimp trawling and the use of fixed gear to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

(c) In accordance with the procedures and restrictions of the FMP for Coastal Migratory Pelagic Resources, when the RA determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in the South Atlantic EEZ off the east coast of Florida between 27°00.6′ N. lat. and 27°50.0′ N. lat., the RA may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

[61 FR 34934, July 3, 1996, as amended at 64 FR 59126, Nov. 2, 1999]

§ 622.47 Gulf groundfish trawl fishery.

Gulf groundfish trawl fishery means fishing in the Gulf EEZ by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

(a) Other provisions of this part notwithstanding, the owner or operator of a vessel in the Gulf groundfish trawl fishery is exempt from the following requirements and limitations for the vessel's unsorted catch of Gulf reef fish:

(1) The requirement for a valid commercial vessel permit for Gulf reef fish in order to sell Gulf reef fish.

(2) Minimum size limits for Gulf reef fish.

(3) Bag limits for Gulf reef fish.

(4) The prohibition on sale of Gulf reef fish after a quota closure.

(b) Other provisions of this part notwithstanding, a dealer in a Gulf state is exempt from the requirement for a dealer permit for Gulf reef fish to receive Gulf reef fish harvested from the Gulf EEZ by a vessel in the Gulf groundfish trawl fishery.

§ 622.48 Adjustment of management measures.

In accordance with the framework procedures of the applicable FMPs, the RA may establish or modify the following items:

(a) *Caribbean coral reef resources.* Species for which management measures may be specified; prohibited species; harvest limitations, including quotas, trip, or daily landing limits; gear restrictions; closed seasons or areas; and marine conservation districts.

(b) *Caribbean reef fish.* Size limits, closed seasons or areas, fish trap mesh size, and the threshold level for overfishing.

(c) *Coastal migratory pelagic fish.* For a species or species group: Age-structured analyses, target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}) (or proxy), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), OY, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic

group Spanish mackerel, permit requirements, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(d) *Gulf reef fish.* (1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, quotas, MSY (or proxy), OY, and estimates of stock biomass achieved by fishing at MSY (B_{MSY}), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT).

(2) SMZs and the gear restrictions applicable in each.

(e) *Gulf royal red shrimp.* MSY, OY, and TAC.

(f) *South Atlantic snapper-grouper and wreckfish.* Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, and restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs.

(g) *South Atlantic golden crab.* Biomass levels, age-structured analyses, MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the RA to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(h) *South Atlantic shrimp.* Biomass levels, age-structured analyses, BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, times and locations when the use of BRDs is required, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(i) *Gulf shrimp.* Bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specifications.

(j) *Gulf red drum.* Target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}), OY, TAC, minimum stock size threshold (MSST), maximum fishing mortality threshold (MFMT), escapement rates for juvenile fish, bag limits, size limits, gear harvest limits, and other restrictions required to prevent exceeding allocations or quotas.

(k) *Atlantic coast red drum.* Definitions of essential fish habitat and essential fish habitat HAPCs or Coral HAPCs.

(l) *South Atlantic coral, coral reefs, and live/hard bottom habitats.* Definitions of essential fish habitat and essential fish habitat HAPCs or Coral HAPCs.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43960, Aug. 27, 1996; 62 FR 13988, Mar. 25, 1997; 62 FR 18539, Apr. 16, 1997; 63 FR 10569, Mar. 4, 1998; 63 FR 18144, Apr. 14, 1998; 64 FR 36781, July 8, 1999; 65 FR 31835, May 19, 2000; 65 FR 37296, June 14, 2000; 65 FR 51253, Aug. 23, 2000]

APPENDIX A TO PART 622—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES

I. Sponges—Phylum Porifera
A. Demosponges—Class Demospongiae
Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona sp., Finger sponge
Myriastra sp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta
II. Coelenterates—Phylum Coelenterata
A. Hydrocorals—Class Hydrozoa
1. Hydroids—Order Athecatae
Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals
B. Anthozoans—Class Anthozoa
1. Soft corals—Order Alcyonacea
Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei

Telesto spp.
2. Gorgonian corals—Order Gorgonacea
Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis sp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
3. Hard Corals—Order Scleractinia
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
4. Black Corals—Order Antipatharia
Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral
5. Anemones—Order Actiniaria
Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
6. Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
7. False Corals—Order Corallimorpharia
Discosoma spp. (formerly *Rhodactis),* False coral
Ricordia florida, Florida false coral
III. Annelid Worms—Phylum Annelida
A. Polychaetes—Class Polychaeta
Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm
IV. Mollusks—Phylum Mollusca
A. Gastropods—Class Gastropoda
Family Elysiidae
Tridachia crispata, Lettuce sea slug
Family Olividae
Oliva reticularis, Netted olive

Family Ovulidae
Cyphoma gibbosum, Flamingo tongue
Family Ranellidae
Charonia tritonis, Atlantic triton trumpet
Family Strombidae, Winged conchs
Strombus spp. (except Queen conch, *S. gigas)*
B. Bivalves—Class Bivalvia
Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americanus, Atlantic thorny oyster
C. Cephalopods—Class Cephalopoda
1. Octopuses—Order Octopoda
Family Octopodidae
Octopus spp. (except the Common octopus, *O. vulgaris)*
V. Arthropods—Phylum Arthropoda
A. Crustaceans—Subphylum Crustacea
1. Decapods—Order Decapoda
Family Alpheidae
Alpheaus armatus, Snapping shrimp
Family Diogenidae
Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
Family Grapsidae
Percnon gibbesi, Nimble spray crab
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Palaemonida
Periclimenes spp., Cleaner shrimp
Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.
Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp
VI. Bryozoans—Phylum Bryozoa
VII. Echinoderms—Phylum Echinodermata
A. Feather stars—Class Crinoidea
Analcidometra armata, Swimming crinoid
Davidaster spp., Crinoids
Nemaster spp., Crinoids
B. Sea stars—Class Asteroidea
Astropecten spp., Sand stars
Linckia guildingii, Common comet star
Ophidiaster guildingii, Comet star
Oreaster reticulatus, Cushion sea star
C. Brittle and basket stars—Class Ophiuroidea
Astrophyton muricatum, Giant basket star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
D. Sea Urchins—Class Echinoidea
Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg
E. Sea Cucumbers—Class Holothuroidea
Holothuria spp., Sea cucumbers
VIII. Chordates—Phylum Chordata
A. Tunicates—Subphylum Urochordata
IX. Green Algae—Phylum Chlorophyta
Caulerpa spp., Green grape algae
Halimeda spp., Watercress algae
Penicillus spp., Neptune's brush
Udotea spp., Mermaid's fan
Ventricaria ventricosa, Sea pearls
X. Red Algae—Phylum Rhodophyta
XI. Sea grasses—Phylum Angiospermae
Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH

Acanthuridae—Surgeonfishes
Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*
Antennariidae—Frogfishes
Frogfish, *Antennarius* spp.
Apogonidae—Cardinalfishes
Flamefish, *Apogon maculatus*
Conchfish, *Astrapogen stellatus*
Aulostomidae—Trumpetfishes
Trumpetfish, *Aulostomus maculatus*
Balistidae—Leatherjackets
Scrawled filefish, *Aluterus scriptus*
Queen triggerfish, *Balistes vetula*
Whitespotted filefish, *Cantherhines macrocerus*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys rigens*
Blenniidae—Combtooth blennies
Redlip blenny, *Ophioblennius atlanticus*
Bothidae—*Lefteye flounders*
Peacock flounder, *Bothus lunatus*
Carangidae—Jacks
Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Almaco jack, *Seriola rivoliana*
Chaetodontidae—Butterflyfishes
Longsnout butterflyfish, *Chaetodon aculeatus*
Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*
Cirrhitidae—Hawkfishes
Redspotted hawkfish, *Amblycirrhitus pinos*
Dactylopteridae—Flying gurnards
Flying gurnard, *Dactylopterus volitans*
Ephippidae—Spadefishes
Atlantic spadefish, *Chaetodipterus faber*
Gobiidae—Gobies
Neon goby, *Gobiosoma oceanops*
Rusty goby, *Priolepis hipoliti*

Grammatidae—Basslets
Royal gramma, *Gramma loreto*
Haemulidae—Grunts
Porkfish, *Anisotremus virginicus*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*
Holocentridae—Squirrelfishes
Squirrelfish, *Holocentrus adscensionis*
Longspine squirrelfish, *Holocentrus rufus*
Blackbar soldierfish, *Myripristis jacobus*
Cardinal soldierfish, *Plectrypops retrospinis*
Labridae—Wrasses
Spanish hogfish, *Bodianus rufus*
Creole wrasse, *Clepticus parrae*
Yellowcheek wrasse, *Halichoeres cyanocephalus*
Yellowhead wrasse, *Halichoeres garnoti*
Clown wrasse, *Halichoeres maculipinna*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*
Green razorfish, *Hemipteronotus splendens*
Hogfish, *Lachnolaimus maximus*
Bluehead wrasse, *Thalassoma bifasciatum*
Lutjanidae—Snappers
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Gray snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Blackline tilefish, *Caulolatilus cyanops*
Sand tilefish, *Malacanthus plumieri*
Mullidae—Goatfishes
Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*
Muraenidae—Morays
Chain moray, *Echidna catenata*
Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*
Ogcocephalidae—Batfishes
Batfish, *Ogcocepahalus* spp.
Ophichthidae—Snake eels
Goldspotted eel, *Myrichthys ocellatus*
Opistognathidae—Jawfishes
Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*
Ostraciidae—Boxfishes
Spotted trunkfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*
Pomacanthidae—Angelfishes
Cherubfish, *Centropyge argi*
Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*
Pomacentridae—Damselfishes
Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*
Priacanthidae—Bigeyes
Bigeye, *Priacanthus arenatus*
Glasseye snapper, *Priacanthus cruentatus*
Scaridae—Parrotfishes
Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Redfin parrotfish, *Sparisoma rubripinne*
Stoplight parrotfish, *Sparisoma viride*
Sciaenidae—Drums
High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*
Scorpaenidae—Scorpionfishes
Serranidae—Sea basses
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Nassau Grouper, *Epinephelus striatus*
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Yellowfin grouper, *Mycteroperca venenosa*
Tiger grouper, *Mycteroperca tigris*
Creole-fish, *Paranthias furcifer*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*
Soleidae—Soles
Caribbean tonguefish, *Symphurus arawak*
Sparidae—Porgies
Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*
Syngnathidae—Pipefishes
Seahorses, *Hippocampus spp.*
Pipefishes, *Syngnathus spp.*
Synodontidae—Lizardfishes

Sand diver, *Synodus intermedius*
Tetraodontidae—Puffers
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

TABLE 3 OF APPENDIX A TO PART 622—GULF REEF FISH

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Carangidae—Jacks
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Goldface tilefish, *Caulolatilus chrysops*
Blackline tilefish, *Caulolatilus cyanops*
Anchor tilefish, *Caulolatilus intermedius*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lopholatilus chamaeleonticeps*
Serranidae—Groupers
Dwarf sand perch, *Diplectrum bivittatum*
Sand perch, *Diplectrum formosum*
Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Carangidae—Jacks
Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Crevalle jack, *Caranx hippos*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Ephippidae—Spadefishes
Spadefish, *Chaetodipterus faber*
Haemulidae—Grunts
Black margate, *Anisotremus surinamensis*
Porkfish, *Anisotremus virginicus*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Smallmouth grunt, *Haemulon chrysargyreum*
French grunt, *Haemulon flavolineatum*
Spanish grunt, *Haemulon macrostomum*
Cottonwick, *Haemulon melanurum*
Sailors choice, *Haemulon parrai*
White grunt, *Haemulon plumieri*
Blue stripe grunt, *Haemulon sciurus*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Puddingwife, *Halichoeres radiatus*
Lutjanidae—Snappers
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray snapper, *Lutjanus griseus*
Mahogany snapper, *Lutjanus mahogoni*
Dog snapper, *Lutjanus jocu*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Blueline tilefish, *Caulolatilus microps*
Golden tilefish, *Lopholatilus chamaeleonticeps*
Sand tilefish, *Malacanthus plumieri*
Percichthyidae—Temperate basses
Wreckfish, *Polyprion americanus*
Serranidae—Sea Basses and Groupers
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*

Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteroperca venenosa*
Sparidae—Porgies
Sheepshead, *Archosargus probatocephalus*
Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Saucereye porgy, *Calamus calamus*
Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nodosus*
Red porgy, *Pagrus pagrus*
Longspine porgy, *Stenotomus caprinus*
Scup, *Stenotomus chrysops*

[61 FR 34934, July 3, 1996, as amended at 62 FR 13988, Mar. 25, 1997; 62 FR 67723, Dec. 30, 1997; 64 FR 57404, Oct. 25, 1999]

APPENDIX B TO PART 622—GULF AREAS

TABLE 1 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters north of Dry Tortugas	24°48.0′	82°48.0′
2 North of Rebecca Shoal	25°07.5′	82°34.0′
3 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
4 West of Egmont Key	27°30.0′	83°21.5′
5 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
6 Southeast corner of Florida Middle Ground	28°11.0′	84°00.0′
7 Southwest corner of Florida Middle Ground	28°11.0′	84°07.0′
8 West corner of Florida Middle Ground	28°26.6′	84°24.8′
9 Northwest corner of Florida Middle Ground	28°42.5′	84°24.8′
10 South of Carrabelle	29°05.0′	84°47.0′
11 South of Cape St. George	29°02.5′	85°09.0′
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0′	85°30.0′
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7′	85°30.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Pensacola	29°46.0′	87°19.0′
16 South of Perdido Bay	29°29.0′	87°27.5′
17 East of North Pass of the Mississippi River	29°14.5′	88°28.0′
18 South of Southwest Pass of the Mississippi River	28°46.5′	89°26.0′
19 Northwest tip of Mississippi Canyon	28°38.5′	90°08.5′
20 West side of Mississippi Canyon	28°34.5′	89°59.5′
21 South of Timbalier Bay	28°22.5′	90°02.5′
22 South of Terrebonne Bay	28°10.5′	90°31.5′
23 South of Freeport	27°58.0′	95°00.0′
24 Off Matagorda Island	27°43.0′	96°02.0′
25 Off Aransas Pass	27°30.0′	96°23.5′
26 Northeast of Port Mansfield	27°00.0′	96°39.0′
27 East of Port Mansfield	26°44.0′	96°37.5′
28 Northeast of Port Isabel	26°22.0′	96°21.0′
29 U.S./Mexico EEZ boundary	26°00.5′	96°24.5′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5′	82°41.5′
2 North of Marquesas Keys	24°48.0′	82°06.5′
3 Off Cape Sable	25°15.0′	82°02.0′
4 Off Sanibel Island—Inshore	26°26.0′	82°29.0′
5 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
6 West of Egmont Key	27°30.0′	83°21.5′
7 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
8 Off Anclote Keys—Inshore	28°10.0′	83°14.0′
9 Off Deadman Bay	29°38.0′	84°00.0′
10 Seaward limit of Florida's waters east of Cape St. George	29°35.5′	84°38.6′
Thence westerly along the seaward limit of Florida's waters to:		
11 Seaward limit of Florida's waters south of Cape San Blas	29°32.2′	85°27.1′
12 Southwest of Cape San Blas	29°30.5′	85°52.0′
13 Off St. Andrew Bay	29°53.0′	86°10.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Florida/Alabama border	29°34.5′	87°38.0′
16 Off Mobile Bay	29°41.0′	88°00.0′
17 South of Alabama/Mississippi border	30°01.5′	88°23.7′
18 Horn/Chandeleur Islands	30°01.5′	88°40.5′
19 Chandeleur Islands	29°35.5′	88°37.0′
20 Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3′	89°00.0′
Thence southerly and westerly along the seaward limit of Louisiana's waters to:		

TABLE 2 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE STRESSED AREA—Continued

Point No. and reference location [1]	North lat.	West long.
21 Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3′	89°28.2′
22 Southeast of Grand Isle	29°09.0′	89°47.0′
23 Quick flashing horn buoy south of Isles Dernieres	28°32.5′	90°42.0′
24 Southeast of Calcasieu Pass	29°10.0′	92°37.0′
25 South of Sabine Pass—10 fathoms	29°09.0′	93°41.0′
26 South of Sabine Pass—30 fathoms	28°21.5′	93°28.0′
27 East of Aransas Pass	27°49.0′	96°19.5′
28 East of Baffin Bay	27°12.0′	96°51.0′
29 Northeast of Port Mansfield	26°46.5′	96°52.0′
30 Northeast of Port Isabel	26°21.5′	96°35.0′
31 U.S./Mexico EEZ boundary	26°00.5′	96°36.0′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

APPENDIX C TO PART 622—FISH LENGTH MEASUREMENTS

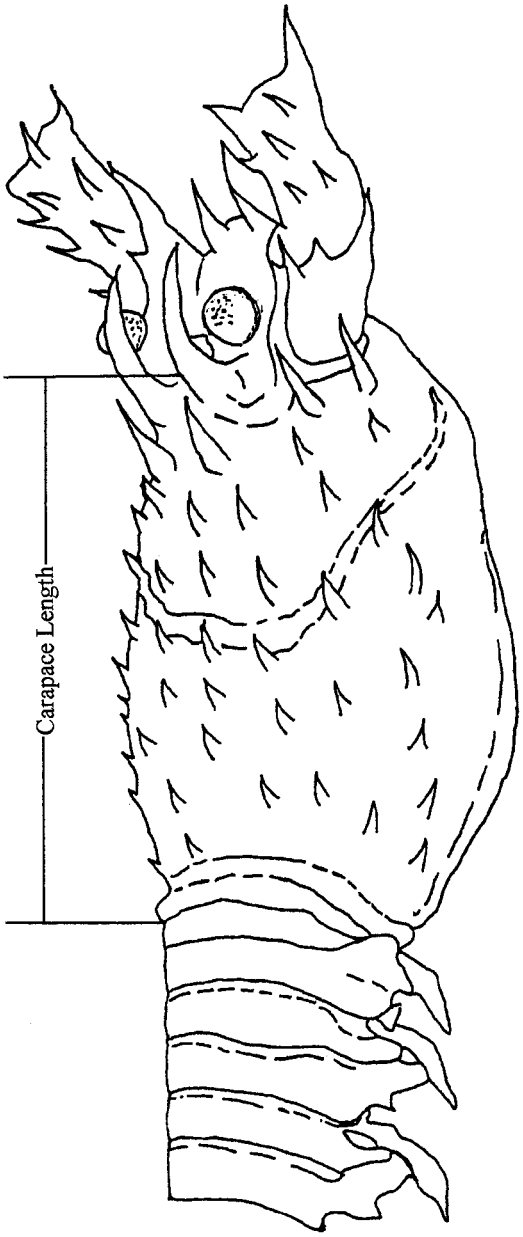
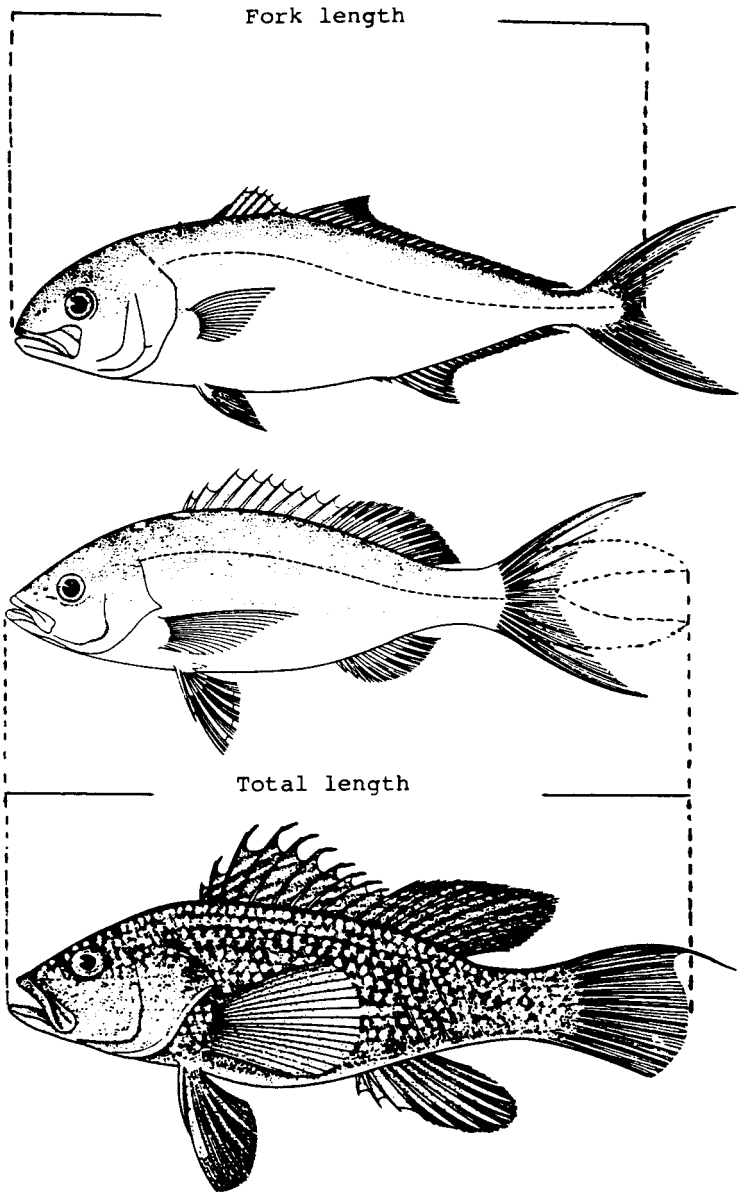


Figure 1 of Appendix C to Part 622—Carapace Length

FIGURE 2 TO APPENDIX C TO PART 622—ILLUSTRATION OF LENGTH MEASUREMENTS



[61 FR 34934, July 3, 1996, as amended at 64 FR 3630, Jan. 25, 1999]

APPENDIX D TO PART 622—SPECIFICATIONS FOR CERTIFIED BRDS

A. *Extended Funnel.*

1. *Description.* The extended funnel BRD consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the codend. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

2. *Minimum Construction and Installation Requirements for Standard Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅝ inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1½ inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 30-inch (76.2-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.2.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

3. *Minimum Construction and Installation Requirements for Inshore Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅜ inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1⅜ inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must

be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh.* The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

C. *Fisheye.*

1. *Description.* The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch diameter, which is inserted into the codend to form an escape opening. Fisheyes of several different shapes and sizes have been tested in different positions in the codend.

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed at the top center of the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend drawstring (tie-off rings) or 70 percent of the distance between the codend drawstring and the forward edge of the codend, excluding any extension, whichever is the shorter distance. In the Gulf EEZ only, when the fisheye BRD is installed in this position, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system.

D. *Gulf fisheye.*

1. *Description.* The Gulf fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel that is inserted into the top center of the codend, or is offset not more than 15 meshes perpendicular to the top center of the codend, to form an escape opening.

2. *Minimum Construction and Installation Requirements.* The Gulf fisheye is a cone-shaped rigid frame constructed of aluminum or steel rods. The rods must be at least ¼-inch (6.35-mm) diameter. Any dimension of the escape opening must be at least 5.0 inches (12.7 cm), and the total escape opening area must be at least 36.0 in^2 (232.3 cm^2). The Gulf fisheye must be installed in the codend of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 12.5 ft (3.81 m) and no less than 8.5 ft (2.59 m) from the codend tie-off rings. When installed in this position, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system. The Gulf fisheye may not be offset more than 15 meshes perpendicular to the top center of the codend.

E. *Jones-Davis.*

1. *Description.* The Jones-Davis BRD is similar to the expanded mesh and the extended funnel BRDs except that the fish escape openings are windows cut around the funnel rather than large-mesh sections. In addition, a webbing cone fish deflector is installed behind the funnel.

2. *Minimum Construction and Installation Requirements.* The Jones-Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single piece of 1⅝-inch (3.5-cm) stretch mesh number 30 nylon 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42-mesh side together.

(b) *28-inch (71.1-cm) cable hoop.* A single hoop must be constructed of ½-inch (1.3-cm) steel cable 88 inches (223.5 cm) in length. The cable must be joined at its ends by a 3-inch (7.6-cm) piece of ½-inch (1.3-cm) aluminum pipe and pressed with a ⅜-inch (0.95-cm) die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches (68.6 and 73.7 cm). The hoop must be attached to the extension webbing 17½ meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(c) *24-inch (61.0-cm) hoop.* A single hoop must be constructed of either number 60 twine 80 inches (203.2 cm) in length or ⅜-inch (0.95-cm) steel cable 75½ inches (191.8 cm) in length. If twine is used, the twine must be laced in and out of the extension webbing 39 meshes behind the leading edge, and the ends must be tied together. If cable is used, the cable must be joined at its ends by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe and pressed together with a ¼-inch (0.64-cm) die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches (58.4 and 63.4 cm). The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger.

The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel.* The funnel must be constructed from four sections of 1½-inch (3.8-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29½ meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29½ meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23-mesh edge to form the funnel.

(e) *Attachment of the funnel in the webbing extension.* The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position.

(f) *Cutting the escape openings.* The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(g) *Alternative Method for Constructing the Funnel and Escape Openings.* The following method for constructing the funnel and escape openings may be used instead of the method described in paragraphs F.2.d., F.2.e., and F.2.f. of this section. With this alternative method, the funnel and escape openings are formed by cutting a flap in each side of the extension webbing; pushing the flaps inward; and attaching the top and bottom edges along the bars of the extension webbing to form the v-shape of the funnel. Minimum requirements applicable to this method include: (1) The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop); (2) clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position; (3) the leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid; and, (4) the area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). To construct the funnel and escape openings using this method, begin 3½ meshes from the leading edge of the extension, at the top center seam, count over 18 meshes on each side, and cut 13 meshes toward the back of the extension. Turn parallel to the leading edge, and cut 26 meshes toward the bottom center of the extension. Next, turn parallel to the top center seam, and cut 13 meshes forward toward the leading edge, creating a flap of webbing 13 meshes by 26 meshes by 13 meshes. Lengthen the flap to 18 meshes by adding a 4½-mesh by 26-mesh rectangular section of webbing to the 26-mesh edge. Attach the 18-mesh edges to the top and bottom of the extension by sewing 2 bars of the extension to 1 mesh on the flap in toward the top center and bottom center of the extension, forming the exit opening and the funnel. Connect the two flaps together in the center with a 7-inch piece of number 42 twine to allow adequate clearance for fish escapement between the flaps and the side openings. On each side, sew a 6-mesh by 10½-mesh section of webbing to 6 meshes of the center of the 26-mesh cut on the extension and 6 meshes centered between the 13-mesh cuts 3½ meshes from the leading edge. This forms two 10-mesh by 13-mesh openings on each side.

(h) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.13-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10–14 inches (25.4–35.6 cm) of the posterior edge of the funnel.

(i) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16-inch (0.79-cm) or ⅜-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(j) *Installation of the cone in the extension.* The cone must be installed in the extension 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine 4 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine must be attached to the 28-inch (71.1-cm) cable hoop

at the center of each of its sides; the points of attachment for the two pieces of twine must be measured 20 inches (50.8 cm) from the midpoint attachment. Two 8-inch (20.3-cm) pieces of number 60 twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24-inch (61-cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11-inch (27.9-cm) cone hoop.

[62 FR 18539, Apr. 16, 1997, as amended at 64 FR 37694, July 13, 1999]

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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AUTHORITY: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

SOURCE: 64 FR 29135, May 28, 1999, unless otherwise noted.

Subpart A—General

§635.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic tunas, Atlantic billfish, Atlantic sharks, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, and the Fishery Management Plan for Atlantic Billfishes. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management unit. The Atlantic billfish regulations govern conservation and management of Atlantic billfish in the management unit. The Atlantic swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The shark regulations govern conservation and management of sharks in the management unit, solely under the authority of the Magnuson-Stevens Act. Sharks are managed under the authority of the Magnuson-Stevens Act.

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the

boundaries of, the States of New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

§ 635.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, ATCA, and § 600.10 of this chapter, the terms used in this part have following meanings. If applicable, the terms used in this part supercede those used in § 600.10:

Archival tag means a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish.

ATCA Certificate of Eligibility (COE) means the certificate that must accompany any applicable shipment of fish pursuant to a finding under 16 U.S.C. 971d (c)(4) or (c)(5).

Atlantic HMS means Atlantic tunas, billfish, sharks, and swordfish.

Atlantic Ocean, as used in this part, includes the North and South Atlantic Oceans, the Gulf of Mexico, and the Caribbean Sea.

BFT landings quota means the portion of the ICCAT BFT catch quota allocated to the United States against which landings of BFT are counted.

Billfish Certificate of Eligibility (COE) means a certificate that accompanies a shipment of billfish indicating that the billfish or related species, or parts thereof, are not from the respective Atlantic Ocean management units.

BSD tag means a numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics information program and recorded on a BSD.

Caudal keel means the horizontal ridges along each side of a fish at the base of the tail fin.

CFL (curved fork length) means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Charleston Bump closed area means the Atlantic Ocean area seaward of the baseline from which the territorial sea is measured from a point intersecting the U.S. coast at 34°00' N. lat. near Wilmington Beach, North Carolina, and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; then proceeding due west to intersect the coast at 31°00' N. lat. near Jekyll Island, Georgia.

CK means the length of a fish measured along the body contour, i.e., a curved measurement, from the point on the cleithrum that provides the shortest possible measurement along the body contour to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Conventional tag means a numbered, flexible ribbon that is implanted or affixed to a fish that is released back into the ocean that allows for the identification of that fish in the event it is recaptured.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of BFT sold to a permitted dealer as required under § 635.5(b)(2)(ii).

Dehooking device means a device intended to remove a hook embedded in a fish in order to release the fish with minimum damage.

Designated by NMFS means the address or location indicated in a letter to permit holders or in a letter accompanying reporting forms.

DeSoto Canyon closed area means the area within the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 30°00' N. lat., 88°00' W. long.; 30°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 84°00' W. long.; 26°00' N. lat., 84°00' W. long.; 26°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 88°00' W. long.; 30°00' N. lat., 88°00' W. long.

Division Chief means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West Highway, Silver Spring, MD, 20910; (301) 713–2347.

Downrigger means a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. The downrigger has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line gear.

Dress means to process a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

Dressed weight (dw) means the weight of a fish after it has been dressed.

East Florida Coast closed area means the Atlantic Ocean area seaward of the baseline from which the territorial sea is measured from a point intersecting the U.S. coast at 31°00' N. lat. near Jekyll Island, Georgia, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00' N. lat., 78°00' W. long.; 28°17' N. lat., 79°00' W. long.; then proceeding along the boundary of the EEZ to 24°00' N. lat., 79°30' W. long.; then connecting by straight lines the following coordinates in the order stated: 24°00' N. lat., 79°30' W. long.; 24°00' N. lat., 81°00' W. long.; 24°00' N. lat., 81°47' W. long.; then proceeding due north to intersect the coast at 81°47' W. long. near Key West, Florida.

EFP means an exempted fishing permit issued pursuant to §600.745 of this chapter or to §635.32.

Eviscerated means a fish that has only the alimentary organs removed.

Export means a shipment to a destination outside the customs territory of the United States for which a Shipper's Export Declaration (Customs Form 7525) is required. Atlantic HMS destined from one foreign country to another, which transits the United States and for which a Shipper's Export Declaration is not required to be filed, is not an export under this definition.

Exporter means the principal party responsible for effecting export from the United States as listed on the Shipper's Export Declaration (Customs Form 7525) or any authorized electronic medium available from U.S. Customs.

Finlet means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

First transaction in the United States means the time and place at which a fish is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

Fishing record means all records of navigation and operations of a fishing vessel, as well as all records of catching, harvesting, transporting, landing, purchasing, or selling a fish.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing year means—

(1) For Atlantic tunas, billfish, and swordfish—June 1 through May 31 of the following year; and

(2) For sharks—January 1 through December 31.

FL (fork length) means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

Giant BFT means an Atlantic BFT measuring 81 inches (206 cm) CFL or greater.

Handgear means handline, harpoon, rod and reel or bandit gear.

Handline means fishing gear that consists of a mainline to which no more than two leaders (gangions) with hooks are attached, and that is released and retrieved by hand, rather than by mechanical means.

High-flyer means a flag, radar reflector or radio beacon transmitter, suitable for attachment to a longline to facilitate its location and retrieval.

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in appendix A to this part); white marlin; blue marlin; sailfish; and longbill spearfish.

ILAP means an initial limited access permit issued pursuant to § 635.4.

Import means the release of HMS from a nation's Customs' custody and entry into the territory of that nation. HMS are imported into the United States upon release from U.S. Customs' custody pursuant to filing an entry summary document (Customs Form 7501) or filing by any authorized electronic medium. HMS destined from one foreign country to another, which transit the United States and for which an entry summary is not required to be filed, are not an import under this definition.

Importer, for the purpose of HMS imported into the United States, means the importer of record as declared on U.S. Customs Form 7501 or by any authorized electronic medium.

Intermediate country means a country that exports to another country HMS previously imported by that nation. Shipments of HMS through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

LAP means a limited access permit issued pursuant to § 635.4.

Large coastal shark (LCS) means one of the species, or a part thereof, listed in paragraph (a) of table 1 in appendix A to this part.

Large medium BFT means a BFT measuring at least 73 inches (185 cm) and less than 81 inches (206 cm) CFL.

Large school BFT means a BFT measuring at least 47 inches (119 cm) and less than 59 inches (150 cm) CFL.

LJFL (lower jaw-fork length) means the straight-line measurement of a fish from the tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

Longline means fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

Management unit means in this part:

(1) For Atlantic tunas, longbill spearfish, blue marlin and white marlin, means all fish of these species in the Atlantic Ocean;

(2) For sailfish, means all fish of this species in the Atlantic Ocean west of 30° W. long.;

(3) For North Atlantic swordfish, means all fish of this species in the Atlantic Ocean north of 5° N. lat.;

(4) For South Atlantic swordfish, means all fish of this species in the Atlantic Ocean south of 5° N. lat.; and

(5) For sharks, means all fish of these species in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

Mid-Atlantic Bight means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

Non-ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(2) of table 1 in appendix A to this part.

North Atlantic swordfish or North Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean north of 5° N. lat.

Northeastern United States closed area means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00′ N. lat., 74°00′ W. long.; 40°00′ N. lat., 68°00′ W. long.; 39°00′ N. lat., 68°00′ W. long.; and 39°00′ N. lat., 74°00′ W. long.

Operator, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Pectoral fin means the fin located behind the gill cover on either side of a fish.

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

Pelagic shark means one of the species, or a part thereof, listed in paragraph (c) of table 1 in appendix A to this part.

PFCFL (pectoral fin curved fork length) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Prohibited shark means one of the species, or a part thereof, listed in paragraph (d) of table 1 in appendix A to this part.

Restricted-fishing day (RFD) means a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel for which a General category permit for Atlantic Tunas has been issued may not fish for, possess, or retain a BFT.

Ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(1) of table 1 in appendix A to this part.

School BFT means a BFT measuring at least 27 inches (69 cm) and less than 47 inches (119 cm) CFL.

Shark means one of the oceanic species, or a part thereof, listed in tables 1 and 2 in appendix A to this part.

Small coastal shark (SCS) means one of the species, or a part thereof, listed in paragraph (b) of table 1 in appendix A to this part.

Small medium BFT means a BFT measuring at least 59 inches (150 cm) and less than 73 inches (185 cm) CFL.

South Atlantic swordfish or south Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean south of 5° N. lat.

Swordfish Certificate of Eligibility (COE) means the certificate that accompanies a shipment of imported swordfish indicating that the swordfish or swordfish parts are not from the Atlantic Ocean or, if they are, are derived from a swordfish weighing more than 33 lb (15 kg) dw.

Tournament means any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching or landing such fish.

Tournament operator means a person or entity responsible for maintaining records of participants and results used for awarding tournament points or prizes, regardless of whether fish are retained.

Trip limit means the total allowable take from a single trip as defined in §600.10 of this chapter.

Weighout slip means a document provided to the owner or operator of the vessel by a person who weighs fish or parts thereof that are landed from a fishing vessel. A document, such as a ''tally sheet,'' ''trip ticket,'' or ''sales receipt,'' that contains such information is considered a weighout slip.

Young school BFT means an Atlantic BFT measuring less than 27 inches (69 cm) CFL.

[64 FR 29135, May 28, 1999, as amended at 65 FR 47237, Aug. 1, 2000]

§635.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in §600.705 of this chapter and in paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§600.730, 600.735, and §600.740 of this chapter, respectively.

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in §635.32.

§635.4 Permits and fees.

Information on permits and permit requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *General.* (1) *Authorized activities.* Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without

the appropriate permit, unless otherwise authorized by NMFS in accordance with this part.

(2) *Vessel permit inspection.* The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic tunas, when engaged in commercial or recreational fishing, and to fish for, take, retain or possess Atlantic swordfish or sharks when engaged in commercial fishing. The vessel operator and must make such permit available for inspection upon request by NMFS or a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection, all valid vessel permits.

(3) *Property rights.* Limited access vessel permits or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, limited access vessel permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) *Dealer permit inspection.* A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

(5) *Display upon offloading.* Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's Atlantic tunas, shark, or swordfish permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2) and (b)(2)(i).

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(7) *Alteration.* A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (b) of this section, may be charged for issuance of the replacement permit.

(9) *Fees.* NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(10) *Permit condition.* An owner issued a swordfish or shark permit pursuant to this part must agree, as a condition of such permit, that the vessel's swordfish or shark fishing, catch and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, or outside the EEZ, and without regard to where such swordfish or shark, or gear are possessed, taken or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations on swordfish or shark fishing, persons aboard the vessel must abide by the state's more restrictive regulations.

(b) *HMS Charter/Headboat Permits.* (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46

CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) [Reserved]

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas or on which Atlantic tunas are retained or possessed must obtain, in addition to any other required permits, a permit in one and only one of the following categories: Angling, Charter/Headboat, General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas vessel permit or a valid HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel's valid permit is in the General, Harpoon, Charter/Headboat, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or is a valid HMS Charter/Headboat permit. Persons may not sell Atlantic tunas caught on board a vessel issued a permit in the Angling category.

(3) Except for purse seine vessels for which that permit has been issued under this section, a vessel owner may change the category of the vessel's permit no more than once each year and only from January 1 through May 15. From May 16 through December 31, the vessel's permit category may not be changed, regardless of a change in the vessel's ownership.

(4) A person can obtain an Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit for swordfish. NMFS will issue Atlantic Tunas Longline category permits to qualifying vessels in calendar year 1999. Thereafter, such permits may be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

(5) An owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns. In either case, the owner must submit a written request for transfer to NMFS, to an address designated by NMFS, and attach an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine category permits.

(e) *Shark vessel LAPs.* (1) As of July 1, 1999, the only valid Federal commercial vessel permits for shark are those that have been issued under the limited access criteria specified in §635.16.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. See §635.16 regarding the initial issuance of these two types of permits. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(3) A commercial limited access permit for sharks is not required if the vessel is recreational fishing and retains no more sharks than the recreational retention limit, is operating pursuant to the conditions of a shark EFP, or that fishes exclusively within state waters.

(f) *Swordfish vessel LAPs.*

(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. See §635.16 regarding the initial issuance of these three types of permits.

(2) As of July 1, 1999, the only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access criteria specified in §635.16.

(3) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(4) Unless the owner has been issued a swordfish handgear permit, a limited access permit for swordfish is valid only when the vessel has on board a valid limited access permit for shark and a valid Atlantic Tunas Longline category permit issued for such vessel.

(g) *Dealer permits*—(1) *Atlantic tunas.* A person that receives, purchases, trades for, or barters for Atlantic tunas from a fishing vessel of the United States or who imports or exports bluefin tuna, regardless of ocean area of origin, must possess a valid dealer permit.

(2) *Shark.* A person that receives, purchases, trades for, or barters for Atlantic sharks from a fishing vessel of the United States must possess a valid dealer permit.

(3) *Swordfish.* A person that receives, purchases, trades for, or barters for Atlantic swordfish from a fishing vessel of the United States or who imports swordfish, regardless of origin, must possess a valid dealer permit. Importation of swordfish by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

(h) *Applications for permits.* An owner of a vessel or a dealer must submit to NMFS, at an address designated by NMFS, a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from NMFS.

(1) *Atlantic tunas vessel permits.* (i) An applicant must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An applicant must also submit a copy of the vessel's valid U.S. Coast Guard documentation or, if not documented, a copy of its valid state registration and any other information that may be necessary for the issuance or administration of the permit as requested by NMFS. The owner must submit such information to an address designated by NMFS.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(7) of this section.

(2) *Limited access permits for swordfish and shark.* See § 635.16 for the issuance of ILAPs for shark and swordfish. See paragraph (l) of this section for transfers of ILAPs and LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits.* (i) An applicant for a dealer permit must provide all the information requested on the application form necessary to identify the company, its principal place of business, and mechanisms by which the company can be contacted.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents requested on the application form.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(i) *Change in application information.* A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in writing to NMFS, to an address designated by NMFS with the issuance of each permit. In the case of a vessel permit for Atlantic tunas or an HMS Charter/Headboat permit, the vessel owner or operator must report the change by phone or internet to a number or website designated by NMFS. A new permit will be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. For certain information changes, NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance.* (1) NMFS will issue a permit within 30 days of receipt

of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) For issuance of ILAPs for shark and swordfish, see §635.16.

(k) *Duration*. A permit issued under this section will be valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph (i) of this section.

(l) *Transfer*—(1) *General*. A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish or tuna longline fishery, in accordance with paragraph (l)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit and by a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Shark, swordfish, and tuna longline LAPs*. (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish ILAP or LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear ILAPs and LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a shark, swordfish, or tuna longline limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial limited access permit or, if applicable, of that vessel's replacement owned as of May 28, 1999.

(B) The vessel's horsepower may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(C) The vessel's length overall, gross registered tonnage, and net tonnage may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. 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.

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark

directed or tuna longline limited access permits have been issued.

(iv) In order to transfer a swordfish, shark or tuna longline limited access permit to a replacement vessel, the owner of the vessel issued the limited access permit must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit to another vessel, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid limited access permit to NMFS with a complete application for a limited access permit, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and tuna longline limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for limited access permit transfers involving vessels.

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the limited access permit(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a limited access permit(s) who sells the permitted vessel but retains the limited access permit(s) must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the limited access permit(s) to a replacement vessel, he/she must apply according to the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas commercial category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas commercial category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m) *Renewal*—(1) *General.* Persons must apply annually for a vessel or dealer permit for Atlantic tunas, sharks, and swordfish, and HMS Charter/Headboats. Persons must apply annually for an Atlantic tunas or HMS Charter/headboat vessel permit. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in § 635.4 (l)(2), all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5, and the applicant is

not subject to a permit sanction or denial under paragraph (a)(6) of this section.

(2) *Shark, swordfish, and tuna longline LAPs.* As of June 1, 2000, the owner of a vessel of the United States that fishes for, possesses, lands or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in §635.4, paragraphs (e) and (f). However, any ILAP that expires on June 30, 2000, is valid through that date. Only valid limited access permit holders in the preceding year are eligible for renewal of a limited access permit(s). Limited access permits that have been transferred according to the procedures of paragraph (l) of this section are not eligible for renewal by the transferor.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37703, July 13, 1999; 65 FR 47238, Aug. 1, 2000]

EFFECTIVE DATE NOTE: At 64 FR 29137, May 28, 1999, §635.4 was added. Paragraph (b) has information collection requirements and will not become effective until Office of Management and Budget approval.

§635.5 Recordkeeping and reporting.

Information on HMS vessel and dealer reporting requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *Vessels*—(1) *Logbooks.* If an owner of an HMS Charter/Headboat vessel, an Atlantic Tunas vessel, or a commercial shark or swordfish vessel, for which a permit has been issued under §635.4(c), (d), (e), or (f), is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the form within 48 hours of completing that day's activities and, for a 1-day trip, before offloading. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS.

(2) *Weighout slips.* If an owner of a permitted vessel is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are normally recorded. For fish that are not individually weighed, a weighout slip must record total weights by species and market category. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or fins must record the weights of carcasses and any detached fins. The owner or operator must also submit copies of weighout slips with the logbook forms required to be submitted under paragraph (a)(1) of this section.

(3) *BFT not sold.* If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, at a number designated by NMFS, at the time of landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. All BFT landed but not sold will be applied to the quota category according to the permit category of the vessel from which it was landed.

(b) *Dealers.* Persons who have been issued a dealer permit under §635.4 must submit reports to NMFS, to an address designated by NMFS, and maintain records as follows:

(1) *Atlantic HMS.* (i) Dealers that receive Atlantic swordfish and Atlantic

sharks from U.S. vessels must report all Atlantic tunas (including BFT), Atlantic swordfish and Atlantic sharks received from U.S. vessels on a form available from NMFS.

(ii) Dealers must report all imports of BFT and swordfish on forms available from NMFS.

(iii) Reports of Atlantic swordfish and shark dealers, including reports of imported swordfish and bluefin tuna, received on the first through the 15th of each month must be postmarked no later than the 25th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. For swordfish imports, a dealer must attach a copy of each certificate of eligibility to the report required under paragraph (b)(1)(i) of this section. If a dealer has not received Atlantic swordfish or Atlantic sharks from U.S. vessels, during a reporting period, he or she must submit a report to NMFS, to an address designated by NMFS so stating, and the report must be postmarked as specified for the reporting period. A negative report is not necessary for Atlantic swordfish imports.

(iv) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by a dealer if he or she provides a copy of each appropriate weighout slip or sales record, provided such weighout slip or sales record by itself or combined with the form available from NMFS includes all of the required information and identifies each fish by species.

(v) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, a dealer must deliver such report no later than the prescribed postmark date for the reporting period.

(2) *Requirements for BFT*—(i) *Reports of BFT.* Each dealer must submit a completed landing report on each BFT received, to NMFS, at an address designated by NMFS, by electronic facsimile (fax) not later than 24 hours from receipt of the fish. The landing report must be signed by the permitted vessel's owner or operator immediately upon transfer of the fish and must indicate the name and permit number of the vessel that landed the fish. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report. The dealer must also submit a bi-weekly report on forms supplied by NMFS for transfers from U.S. vessels and for imports of BFT. For BFT received on the first through the 15th of each month, the dealer must submit the bi-weekly report forms to NMFS postmarked no later than the 25th of that month. Reports of receipt of such BFT received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month.

(ii) *Dealer Tags.* NMFS will issue numbered dealer tags to each person issued a dealer permit for Atlantic tunas under § 635.4. A dealer tag is not transferable and is usable only by the dealer to whom it is issued. Dealer tags may not be reused once affixed to a tuna or recorded on a package, container, or report.

(A) *Affixing dealer tags.* A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received immediately upon its offloading from a vessel. The dealer or dealer's agent must affix the tag to the tuna between the fifth dorsal finlet and the caudal keel.

(B) *Removal of dealer tags.* A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported BFT must remain on the tuna until the tuna is cut into portions. If the BFT or BFT parts subsequently are packaged for transport for domestic commercial use or for export, the dealer or the BSD tag number must be written legibly and indelibly on the outside of any package or container. Such tag number must be recorded on any document accompanying shipment of BFT for commercial use or export.

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each written report required under paragraphs (b)(1)(i) through (b)(1)(iii) and paragraph (b)(2)(i) of this section for a period of 2 years from the date on

which each report was required to be submitted.

(c) *Anglers.* The owner of a vessel permitted in the Atlantic tunas Angling or Atlantic tunas or HMS Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1-888-USA-TUNA within 24 hours of the landing. Alternative BFT reporting procedures may be established by NMFS in cooperation with states and may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, or mandatory check-in stations. A census or a statistical sample of persons fishing under the Angling category may be used for these alternative reporting programs, and owners of selected vessels will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting BFT. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that BFT landings reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for Angling category quota monitoring. In such case, NMFS will file with the Office of the Federal Register for publication notification indicating that compliance with the state system satisfies the reporting requirement of this paragraph (c).

(d) *Tournament operators.* A tournament operator must notify NMFS of the purpose, dates, and location of the tournament conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, at least 4 weeks prior to commencement of the tournament. NMFS will notify a tournament operator in writing, when his or her tournament has been selected for reporting. The tournament operator that is selected must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament and must attach a copy of the tournament rules.

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under §635.4 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a vessel or dealer permit under this part, or anyone responsible for offloading, storing packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

(f) *Additional data and inspection.* Additional data on fishing effort directed at Atlantic HMS or on catch of Atlantic HMS, regardless of whether retained, may be collected by contractors and statistical reporting agents, as designees of NMFS, and by authorized officers. A person issued a permit under §635.4 is required to provide requested information about fishing activity, and a person, regardless of whether issued a permit under §635.4, who possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS or its designees upon request.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999]

§635.6 Vessel and gear identification.

(a) *Vessel number.* For the purposes of this section, a vessel's number is the vessel's official number issued by either by the U.S. Coast Guard or by the appropriate state agency.

(b) *Vessel identification.* (1) An owner or operator of a vessel for which a permit has been issued under §635.4 must display the vessel's number–

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) in height for all other vessels.

(2) The owner or operator of a vessel for which a permit has been issued under § 635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

(3) In addition to gear marking requirements in this paragraph (c)(1), provisions on gear marking for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(b) of this title.

§ 635.7 At-sea observer coverage.

(a) *Applicability.* NMFS may select for observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4. Vessels permitted in the HMS Charter/Headboat and Atlantic Tunas Angling and Charter/Headboat categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 are required to take observers on a mandatory basis.

(b) *Selection of vessels.* NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples.

(c) *Notification of trips.* The owner or operator of a vessel that is selected under paragraph (b) of this section must notify NMFS, at an address designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements such as expected gear deployment, trip duration and fishing area will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers.* Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard. Notwithstanding the above procedures for assignment or waiver, at no time shall a person aboard a vessel issued a directed shark ILAP or LAP under § 635.4 fish for Atlantic sharks with a gillnet or possess sharks on board a vessel issued a directed shark ILAP or LAP with a gillnet on board unless a NMFS-approved observer is aboard the vessel.

(e) *Requirements.* The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with §§ 600.725 and 600.746 of this chapter and—

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

(2) Allow the 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 observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the 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.

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

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999]

Subpart B–Limited Access

§ 635.16 Limited access permits.

As of July 1, 1999, the only valid commercial vessel permits for shark and swordfish are those that have been issued under the limited access criteria specified in this section. If the Federal commercial shark permit issued to the vessel owner prior to July 1, 1999, was based on the qualifications of the operator, then a shark limited access permit will be issued to the qualifying vessel owner, subject to the provisions in this part, with the requirement that the operator must be on board the vessel to fish for, take, retain, or possess Atlantic sharks in state or Federal waters. This requirement expires May 30, 2000.

(a) *Eligibility requirements for ILAPs*—(1) *Directed permits.* To be eligible for a directed ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997.

(ii) Documented shark or swordfish landings from the respective federally permitted vessel that he or she owned, of at least $5,000 per year in value or in number per year as follows—

(A) One hundred and two sharks per year for any 2 calendar years, from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid, or

(B) Twenty-five swordfish per year for any 2 calendar years, from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid.

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) *Incidental catch permits.* To be eligible for an incidental ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective federally permitted vessel that he or she owned of at least—

(A) Seven sharks from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Eleven swordfish from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid; and

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998; and

(iv) Met either the gross income from fishing or the gross sales of fish requirement specified in paragraph (a)(3)(i) or (ii) of this section; or

(v) Been the owner of a vessel that had a permit for Atlantic tuna in the Incidental category at any time from January 1, 1998, through December 31, 1998; or

(vi) Been the owner of a vessel that is eligible for a directed or incidental ILAP for swordfish (incidental shark ILAPs only).

(3) *Handgear permits.* To be eligible for a swordfish handgear ILAP—

(i) The owner's gross income from commercial fishing (i.e., harvest and first sale of fish) or from charter/headboat fishing must be more than 50 percent of his or her earned income, during one of the 3 calendar years preceding the application, or

(ii) The owner's gross sales of fish harvested from his or her vessel must have been more than $20,000, during one of the 3 calendar years preceding the application, or

(iii) The owner must provide documentation of having been issued a swordfish permit for use with harpoon gear, or

(iv) The owner must document his or her historical landings of swordfish with handgear through logbook records, verifiable sales slips or receipts from registered dealers or state landings records.

(b) *Landings histories.* For the purposes of the landings history criteria in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section:

(1) The owner of a permitted vessel at the time of a landing retains credit for the landing unless ownership of the vessel and the landings history has been transferred and there is a written agreement signed by both parties to the transfer, or there is other credible written evidence that the original owner transferred the landings history to the new owner.

(2) A vessel's landings history may not be divided among owners. A transfer of credit for landings history must be for the entire record of landings under the previous owner.

(3) Vessel landings histories may not be consolidated among vessels. Owners may not pool landings histories to meet the eligibility requirements.

(c) *Alternative eligibility requirements for initial permits.* (1) Persons who acquired ownership of a vessel and its landings history after December 31, 1997, are exempt from the requirement to have owned a federally permitted shark or swordfish vessel at any time during the period July 1, 1994, through December 31, 1997. The acquired landings history must meet the criteria for a directed or incidental catch permit specified in paragraph (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2)(ii)(A) or paragraph (a)(2)(ii)(B) of this section, and such persons must have had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) If a person first obtained a shark or swordfish permit in 1997, the required landings for a directed or incidental catch permit specified in paragraphs (a)(1)(ii) and (a)(2)(ii) are modified as follows:

(i) To qualify for a directed shark or swordfish ILAP, respectively, such persons must document landings from a federally permitted vessel of at least:

(A) One hundred and two sharks in calendar year 1997, provided such landings occurred when the permit was valid, or

(B) Twenty-five swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(ii) To qualify for an incidental shark or swordfish catch ILAP, respectively, such persons must document landings from a federally permitted vessel of at least one shark or swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(d) *Procedures for initial issuance of LAPs*—(1) *Notification of status.* NMFS will send all written correspondence regarding limited access permits by certified mail.

(i) Shortly after the final rule is published, the Division Chief will notify each owner of a vessel who had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, each owner of a vessel who had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998, and each owner of a vessel that had a valid Atlantic tuna Incidental category permit at any time from January 1, 1998, through December 31, 1998, of the initial determination of the owner's eligibility for a directed or incidental catch ILAP. The Division Chief will make the initial determination based on the criteria in paragraphs (a)(1), (a)(2), and (c)(2) of this section and on records available to NMFS and mail the appropriate permit. The Division Chief will not make initial determinations of eligibility for a vessel permit under the alternative eligibility requirements specified in

paragraph (a)(3) or (c)(1) of this section; persons that believe they qualify for a LAP under these criteria must apply to the Division Chief.

(ii) If NMFS determines that all qualifications for a directed or incidental catch ILAP have been met and that no further action is required, the appropriate permit for the vessel will be included with the notification. An ILAP issued by NMFS will be valid through the expiration date indicated on the permit.

(iii) A person must apply to the Division Chief for the appropriate permit if—

(A) He or she does not agree with the initial determination;

(B) He or she believes that he or she qualifies for a directed or incidental catch ILAP but did not receive a letter from the Division Chief regarding eligibility status; or

(C) He or she believes that he or she qualifies for a swordfish handgear permit.

(2) *Applications for ILAPs.* (i) Applicants may obtain application forms and instructions from the Division Chief. The vessel owner must submit a completed signed application form and all required supporting documents.

(ii) An application for a directed or incidental catch ILAP must be submitted to the Division Chief postmarked no later than September 1, 1999. An application for an initial swordfish handgear permit must be submitted to the Division Chief postmarked no later than *December 1, 1999.* Any application received by the Division Chief after these dates will not be considered.

(iii) Each application must be accompanied by documentation showing that the criteria for the requested permit have been met. Vessel landings of sharks in numbers of fish or value through June 30, 1993, may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. Vessel landings of sharks in numbers of fish after July 1, 1993, and all vessel landings of swordfish in numbers of fish may be documented only by fishing vessel logbook records that NMFS received before March 2, 1998. Vessel landings of sharks or swordfish in value may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. NMFS will not apply any landing of fish by number of fish or value that occurred when the vessel did not have a valid Federal permit.

(iv) Information submitted on an application and documentation in support of an application is subject to verification by comparison with Federal, state, and other records and information. Submission of false information or documentation may result in disqualification from initial participation in the shark, swordfish, or tunas fisheries and may result in Federal prosecution.

(v) If the Division Chief receives an incomplete application in a timely manner, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of receipt of the Division Chief's notification, the application will be considered abandoned.

(3) *Actions on applications.* Within 30 days of receipt of a complete application, the Division Chief will take one of the following actions:

(i) If the eligibility requirements are met, the Division Chief will issue the appropriate ILAP which will be valid through the marked expiration date.

(ii) If, based on the information and documentation supplied with the application, the Division Chief determines that the applicant does not meet the eligibility criteria for the requested vessel permit, the Division Chief will deny the application in a letter to the applicant. If, based on the documentation supplied, the Division Chief believes the applicant is qualified for an incidental catch vessel permit instead of the requested directed ILAP, he or she will notify the applicant of the denial of the requested directed ILAP but will issue the incidental catch ILAP.

(4) *Appeals.* (i) If an application for an ILAP is denied or if an incidental catch ILAP is issued instead of the requested directed ILAP, the applicant may appeal the denial to the Director. The sole grounds for appeal will be that the original denial by the Division Chief was based on incorrect or incomplete information. No other grounds will be

considered. An appeal must be in writing, must be submitted to the Director postmarked no later than 90 days after receipt of the notice of denial, must specify the grounds for the appeal, and must include documentation supporting the grounds for the appeal. Documentation of vessel landings that the Director may consider in support of an appeal is described in paragraph (d)(2)(iii) of this section. Photocopies of documentation (e.g., permits, logbook reports) will be acceptable for initial submission. The Director may request originals at a later date, which would be returned to the appellant.

(ii) Upon receipt of a complete written appeal with supporting documentation, the Director may issue a provisional ILAP that is valid for the period during the appeal. This provisional permit will be valid only for use with the specified gear and will be subject to all regulations contained in this part.

(iii) The Director will appoint an appeals officer who will review the appeal documentation and other available records. If the information and documentation presented in the appeal are insufficient, inconsistent with vessel ownership, landings history, and other information available from NMFS' records, or cannot be verified, the appeals officer may notify the appellant that the information supplied is not adequate to warrant issuance of the requested permit. The appellant will have 30 days from the date of receipt of the notification to submit to the appeals officer corroborating documents in support of the appeal or to submit a revised appeal. After the written appeal documentation is complete, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Director within 60 days of receipt of the appeal.

(iv) The Director will make a final decision on the appeal and send the appellant notice of the decision. The Director's decision is the final administrative action of the Department of Commerce on the application.

(v) If the appeal is denied, the provisional permit will become invalid 5 days after receipt of the notice of denial. If the appeal is accepted, NMFS will issue an appropriate permit.

(e) *Transfer of LAPs.* For provisions on transfer of limited access permits, see § 635.4(l).

(f) *Renewal of LAPs.* For provisions on renewal of limited access permits, see § 635.4(m).

Subpart C—Management Measures

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas.

(b) *BFT size classes.* The size class of a BFT found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing with the Office of the Federal Register for publication notification of the adjustment.

(c) *BFT, bigeye tuna, and yellowfin tuna.* (1) No person shall take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm) CFL;

(2) Applying the conversion factor from PFCFL to CFL for a beheaded BFT in § 635.20(b) means that no person shall retain or possess a BFT, with the head removed, that is less than 20 inches (51 cm) PFCFL.

(3) No person shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut.

(d) *Billfish.* (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(e) *Sharks.* (1) No person shall take, retain, or possess in the Atlantic EEZ any species classified as a ridgeback LCS shark, taken from its management unit that is less than 54 inches (137 cm), fork length, or, if the head and fins have been removed, 30 inches (76 cm) as a straight line from the first dorsal fin ray to the precaudal pit. If the precaudal pit has been removed, such measurement will be to the posterior edge of the carcass. For the purposes of enforcing the minimum size, it is a rebuttable presumption that any ridgeback shark from which the head and fins have been removed is a ridgeback LCS shark.

(2) All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins attached and be at least 54 inches (137 cm), FL, except that the minimum size limit does not apply for Atlantic sharpnose sharks.

(f) *Swordfish.* (1) No person shall take, retain, or possess a north or south Atlantic swordfish taken from its management unit that is less than 29 inches (73 cm), CK, or 33 lb (15 kg) dressed weight. A swordfish that is damaged by shark bites may be retained only if the remainder of the carcass is at least 29 inches (73 cm) CK, or 33 lb (15 kg) dw. No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(2) Except for a swordfish landed in a Pacific state and remaining in the state of landing, a swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a certificate of eligibility attesting that the swordfish was lawfully imported. Refer to § 635.46(b) for the requirements related to the certificate of eligibility.

(3) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999]

§ 635.21 Gear operation and deployment restrictions.

(a) *All Atlantic HMS fishing gears.* (1) An Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(b) *General.* No person shall use any gear to fish for Atlantic HMS other than those gears specifically authorized in this part. A vessel using or having on board in the Atlantic Ocean any unauthorized gear may not have on board an Atlantic HMS.

(c) *Pelagic longlines.* For purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, high-flyers, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

(1) From August 1, 1999, through November 30, 2000, no person may deploy a pelagic longline that is more than 24 nautical miles (44.5 km) in length in the Mid-Atlantic Bight.

(2) If pelagic longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calendar year;

(ii) In the Charleston Bump closed area from February 1 through April 30 each calendar year;

(iii) In the Florida East Coast closed area at any time beginning at 12:01 a.m. on February 1, 2001; and,

(iv) In the DeSoto Canyon closed area at any time beginning at 12:01 a.m. on November 1, 2000.

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic longline gear, the operator of the vessel must immediately release the animal, retrieve the pelagic longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(4) In the Gulf of Mexico: pelagic longline gear may not be fished or deployed from a vessel issued a permit under this part with live bait affixed to the hooks; and, a person aboard a vessel issued a permit under this part that has pelagic longline gear on board shall not maintain live baitfish in any tank or well on board the vessel and shall not possess live baitfish, and shall not set up or attach an aeration or water circulation device in or to any such tank or well. For the purposes of this section, the Gulf of Mexico includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(d) *Authorized gear*—(1) *Atlantic tunas.* A person that retains or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board the vessel any gear other than that authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. When fishing for Atlantic tunas other than BFT, fishing gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit as well as ILAPs or LAPs for both swordfish and sharks. When fishing for BFT, a person must use only the gear types authorized for the Atlantic tunas or HMS permit category of the fishing vessel:

(i) *Angling.* Rod and reel (including downriggers) and handline.

(ii) *Charter/Headboat.* Rod and reel (including downriggers), bandit gear, and handline.

(iii) *General.* Rod and reel (including downriggers), handline, harpoon, and bandit gear.

(iv) *Harpoon.* Harpoon.

(v) *Longline.* Longline.

(vi) *Purse Seine.* Purse seine.

(A) *Mesh size.* A purse seine used in directed fishing for BFT must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and must have at least 24–count thread throughout the net.

(B) *Inspection of purse seine vessels.* Persons that own or operate a purse seine vessel conducting a directed fishery for Atlantic tunas must have their fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any BFT after a fishing trip, such persons must request an inspection of the vessel and catch by notifying NMFS. If, after notification by the vessel, NMFS does not arrange to inspect the vessel and catch at offloading, the inspection requirement is waived.

(vii) *Trap.* Pound net and fish weir.

(2) *Billfish.* (i) Persons may possess a blue marlin or white marlin in or take a blue marlin or a white marlin from its management unit only if it is harvested by rod and reel. Regardless of how taken, persons may not possess a blue marlin or a white marlin in or take a blue marlin or a white marlin from its management unit on board a vessel using or having on board a pelagic longline.

(ii) Persons may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ only if it is harvested by rod and reel. Regardless of how taken, persons may not possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ on

board a vessel using or having on board a pelagic longline.

(3) *Sharks.* (i) No person may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than handgear, longline or gillnet.

(ii) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark drift gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(f) of this title.

(iv) While fishing for Atlantic sharks with a gillnet, the gillnet must remain attached to the vessel at one end.

(4) *Swordfish.* (i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

(ii) An Atlantic swordfish may not be retained or possessed on board a vessel with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from a vessel using or having on board a gillnet.

(iii) A person aboard a vessel issued a directed handgear ILAP or LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when it is on board, or offloaded from a vessel using or having on board longline gear.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 65 FR 47238, Aug. 1, 2000]

§ 635.22 Recreational retention limits.

(a) *General.* Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, and to a yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a vessel permit under § 635.4 for Atlantic sharks. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a vessel permit under § 635.4 for Atlantic tunas in any category other than Angling or Charter/Headboat.

(b) *Billfish.* No longbill spearfish from the management unit may be possessed shoreward of the outer boundary of the EEZ.

(c) *Sharks.* One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(d), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained.

(d) *Yellowfin tuna.* Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999]

§ 635.23 Retention limits for BFT.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *General category.* (1) No person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the school, large school, or small medium size class.

(2) On an RFD, no person aboard a vessel that has been issued a General

category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the FEDERAL REGISTER.

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has a General category Atlantic Tunas permit. On days other than RFDs, when the General category is open, no person aboard such vessel may continue to fish, and the vessel must immediately proceed to port once the applicable limit for large medium or giant BFT is retained.

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

(b) *Angling category*. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels permitted in Atlantic tunas Angling category as follows:

(1) *Large medium and giant BFT*. (i) No large medium or giant BFT may be retained, possessed, landed, or sold in the Gulf of Mexico, except one per vessel per year may be landed if caught incidentally to fishing for other species.

(ii) One per vessel per year may be retained, possessed, and landed outside the Gulf of Mexico.

(iii) When a large medium or giant BFT has been caught and retained under this paragraph (b)(1), no person aboard the vessel may continue to fish, the vessel must immediately proceed to port, and no such BFT may be sold or transferred to any person for a commercial purpose.

(2) *School, large school, or small medium BFT*. One per vessel per day may be retained, possessed, or landed. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained.

(3) *Changes to retention limits*. To provide for maximum utilization of the quota for BFT spread over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit and vice versa. Such increase or decrease will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication.

(c) *HMS or Tunas Charter/Headboat*. Persons aboard a vessels permitted in Atlantic HMS or Tunas Charter/Headboat category may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category as follows:

(1) When fishing in the Gulf of Mexico, the restrictions applicable to the Angling category specified in paragraph (b)(1) of this section apply.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed, the restrictions applicable to the Angling category specified in paragraphs (b)(1) through (b)(3) of this section apply.

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has an HMS or Atlantic Tunas Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

(d) *Harpoon category*. Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land multiple giant BFTs per day. An incidental catch of only one large medium BFT per vessel per day may be retained, possessed, or landed.

(e) *Purse Seine category*. Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category,

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the giant BFT landed on that trip, provided that the total amount of large medium BFT landed by that vessel during the fishing year does not exceed 10 percent, by weight, of the total amount of giant BFT allocated to that vessel for that fishing year.

(2) May retain, possess or land BFT smaller than the large medium size class that are taken incidentally when fishing for skipjack tuna or yellowfin tuna in an amount not exceeding 1 percent, by weight, of the skipjack tuna and yellowfin tuna landed on that trip. Landings of BFT smaller than the large medium size class may not be sold and are counted against the Purse Seine category BFT quota allocated to that vessel.

(f) *Longline category*. Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally in fishing for other species. Limits on such retention/possession/landing/sale are as follows:

(1) For landings south of 34°00′ N. lat., one large medium or giant BFT per vessel per trip may be landed, provided that, for the months of January through April, at least 1,500 lb (680 kg) and for the months of May through December, at least 3,500 lb (1,588 kg), either dw or round weight, of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) For landings north of 34°00′ N. lat., landings per vessel per trip of large medium and giant BFT may not exceed 2 percent by weight, either dw or round weight, of all other fish which are legally caught, retained, and offloaded from the same trip and which are recorded on the dealer weighout slip as sold.

(g) *Trap category*. Persons aboard a vessel permitted in the Atlantic Tunas Trap category may retain, possess, land, and sell each fishing year only one large medium or giant BFT that is taken incidentally while fishing for other species with a pound net or fish weir. No other Atlantic tunas caught in a pound net or fish weir may be retained.

[64 FR 29135, May 28, 1999, as amended at 65 FR 42887, July 12, 2000]

§ 635.24 Commercial retention limits for sharks and swordfish.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *Sharks*. (1) Persons who own or operate a vessel that has been issued a directed ILAP or LAP for shark may retain, possess or land no more than 4,000 lb (1,814 kg), dw, of LCS per trip.

(2) Persons who own or operate a vessel that has been issued an incidental catch ILAP or LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

(b) *Swordfish*. (1) Persons aboard a vessel that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than five swordfish per trip in

or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

§ 635.25 [Reserved]

§ 635.26 Catch and release.

(a) *BFT*. (1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a tag and release program, provided the person tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging and, if the BFT was previously tagged, the information on the previous tag. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all persons aboard that vessel are ineligible to fish under the tag-and-release program.

(2) Persons may obtain NMFS-issued conventional tags, reporting cards, and detailed instructions for their use from the NMFS Cooperative Tagging Center. Persons may use a conventional tag obtained from a source other than NMFS to tag BFT, provided the use of such tags is registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of a conventional tag from that source. An angler using an alternative source of tags wishing to tag BFT may contact the NMFS Cooperative Tagging Center at the Southeast Fishery Science Center.

(3) An angler registering for the HMS tagging program is required to provide his or her name, address, phone number and, if applicable, the identity of the alternate source of tags.

(b) *Billfish*. NMFS is encouraging further catch and release of Atlantic billfish by establishing a recreational catch-and-release fishery management program, consistent with the guidance of § 600.350(c).

(c) *Sharks*. Notwithstanding the other provisions of this part, a person may fish for white sharks (*Carcharodon carcharias*) with rod and reel, provided the person releases such fish to the sea immediately with a minimum of injury, and that such fish may not be removed from the water.

[64 FR 29135, May 28, 1999, as amended at 65 FR 42887, July 12, 2000]

§ 635.27 Quotas.

(a) *BFT*. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

(1) *General category landings quota*. Prior to each fishing year, NMFS will set the General category effort control schedule, including time-period subquotas and restricted-fishing days, through proposed and final specifications published in the FEDERAL REGISTER.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS or Atlantic tunas Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23(c)(3) regarding landings by vessels with an HMS or Atlantic tunas Charter/Headboat permit that are counted against the General category landings quota. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category landings quota is 47.1 percent of the overall U.S. BFT landings quota, less 10 mt which is set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72° 27′ W. long (Shinnecock Inlet) and running SSE 150° true, and north of 38°47′ N. lat. as specified in § 635.27(a)(1)(iii). This 47.1 percent, less the 10 mt set aside as specified in § 635.27(a)(1)(iii), is apportioned as follows:

(A) June 1 through August 31—60 percent;

(B) September 1 through September 30—30 percent; and

(C) October 1 through December 31—10 percent.

(ii) NMFS will adjust each period's apportionment based on overharvest or underharvest in the prior period.

(iii) When the coastwide General category fishery has been closed in any quota period under § 637.28(a)(1), NMFS may publish notification in the FEDERAL REGISTER to make available all or part of the 10 mt landings quota set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27′ W. long. (Shinnecock Inlet) and running SSE 150 true, and north of 38°47′ N. lat. The daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period established under paragraph (a)(1)(i) of this section may be carried over for the purpose of renewing the set-aside fishery at a later date.

(2) *Angling category landings quota.* The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an Angling category Atlantic Tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. No more than 2.3 percent of the annual Angling category landings quota may be large medium or giant BFT and, over each 4–consecutive-year period, no more than 8 percent of the overall U.S. BFT landings quota may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve as specified under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 47.2 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 38° 47′ N. lat.

(ii) an amount equal to 47.2 percent of the large school/small medium BFT Angling category quota, may be caught, retained, possessed, or landed south of 38° 47′ N. lat.

(iii) an amount equal to 66.7 percent of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 38° 47′ N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. No more than 78.9 percent of the Longline category quota may be caught, retained, possessed, or landed in the area south of 34°00′ N. lat.

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT

landings quota. The directed purse seine fishery for BFT commences on August 15 each year.

(ii) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued must apply in writing to NMFS at an address designated by NMFS, for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on June 1.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(9)(i) of this section. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (mt) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not altered by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether retained.

(iv) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued may apply to NMFS to permanently consolidate Purse Seine category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any purse seine fishery in which BFT might be caught.

(5) *Harpoon category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota.

(6) *Trap category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Trap category Atlantic Tunas permits have been issued is 0.1 percent of the overall U.S. BFT quota.

(7) *Reserve*. (i) The total amount of BFT that is held in reserve for inseason adjustments and fishery-independent research using quotas or subquotas other than the Angling category school BFT subquota, is 2.5 percent of the overall U.S. BFT quota. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of this reserve for inseason adjustments to any category quota in the fishery, other than the Angling category school BFT subquota.

(ii) The total amount of school BFT that is held in reserve for inseason adjustments and fishery independent research is 18.5 percent of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section, which is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of the school BFT held in reserve for inseason adjustments to the Angling category.

(iii) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment. Before making any such adjustment, NMFS will consider the following factors:

(A) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(B) The catches of the particular category quota to date and the likelihood

of closure of that segment of the fishery if no allocation is made.

(C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(E) Effects of the transfer on BFT rebuilding and overfishing.

(F) Effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

(8) *Inseason adjustments.* Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories. If it is determined, based on the factors in paragraphs (a)(7)(iii)(A) through (a)(7)(iii)(F) of this section and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the reserve as specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this section. NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment.

(9) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the Reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to account for overharvest in any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(7)(iii) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4–consecutive-year period beginning in the 1999 fishing year does not exceed 8 percent by weight of the total U.S. BFT quota for that period.

(iv) If NMFS determines that the annual dead discard allowance has been exceeded in one fishing year, NMFS shall subtract the amount in excess of the allowance from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards. If NMFS determines that the annual dead discard allowance has not been reached, NMFS may add one-half of the remainder to the amount of BFT that can be landed in the subsequent fishing year. Such amount may be allocated to individual fishing categories or to the Reserve.

(v) NMFS will file with the Office of the Federal Register for publication notification of the amount subtracted or added and the basis for the quota reductions or increases made pursuant to paragraphs (a)(9)(i) through (a)(9)(iv) of this section.

(b) *Sharks*—(1) *Commercial quotas.* The commercial quotas for shark specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks.

(i) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 816 mt dw, apportioned between ridgeback and non-ridgeback shark and divided between two equal semiannual fishing seasons, January 1 through June 30, and July 1 through December 31. The length of each season

will be determined based on the projected catch rates, available quota, and other relevant factors. NMFS will file with the Office of the Federal Register for publication notification of each season's length at least 30 days prior to the beginning of the season. The quotas for each fishing season (unless otherwise specified in the FEDERAL REGISTER as provided in paragraph (b)(1)(iv) of this section are as follows:

(A) Ridgeback shark—310 mt dw.

(B) Non-ridgeback shark–98 mt dw.

(ii) *Small coastal sharks*. The annual commercial quota for small coastal shark is 359 mt dw, (unless otherwise specified in the FEDERAL REGISTER as provided in paragraph (b)(1)(iv) of this section) divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual season is 179.5 mt, dw.

(iii) *Pelagic sharks*. The annual commercial quotas for pelagic sharks are 92 mt dw for porbeagle sharks and 488 mt dw for all other pelagic sharks (unless otherwise specified in the FEDERAL REGISTER as provided in paragraph (b)(1)(iv) of this section). These quotas are divided between two equal semiannual periods, January 1 through June 30, and July 1 through December 31. The quotas for each semiannual period are as follows:

(A) Porbeagle sharks—46 mt dw.

(B) Pelagic sharks, other than porbeagle sharks—244 mt dw.

(C) Blue sharks—136.5 mt dw.

(iv) *Annual adjustments*. (A) NMFS will adjust the next year's semiannual quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any semiannual period. For example, a commercial quota underage or overage in the season that begins January 1 will result in an equivalent increase or decrease in the following year's quota for the season that begins January 1, provided that the annual quotas are not exceeded. NMFS will file with the Office of the Federal Register for publication notification of any adjustment at least 30 days prior to the start of the next fishing season.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded at least 30 days prior to the start of the next fishing season.

(C) Sharks discarded dead are counted against the applicable directed fishery quota. Sharks taken and landed from state waters are counted against the applicable directed fishery quota.

(2) *Public display quota*. The annual quota for persons who collect sharks from any of the management groups under an EFP is 60 mt whole weight (43 mt dw). All sharks collected under the authority of an EFP, subject to restrictions at § 635.32, will be counted against this quota.

(c) *Swordfish*. (1) Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into semi-annual directed fishery quotas and an incidental catch quota for fishermen targeting other species. A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the directed fishery quota. A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish has been issued, landed consequent to recreational fishing, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the incidental catch quota. The entire quota for the South Atlantic swordfish stock is reserved for longline vessels for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities is prohibited in the Atlantic Ocean south of 5° N. lat.

(i) *North Atlantic swordfish stock*. (A) The annual directed fishery quota for the North Atlantic swordfish stock is 2033.2 mt dw, divided into two equal semiannual quotas of 1016.6 mt dw, one for June 1 through November 30, and

the other for December 1 through May 31 of the following year.

(B) The annual incidental catch quota for the North Atlantic swordfish stock is 300 mt dw.

(ii) *South Atlantic swordfish stock*. The annual directed fishery quota for the South Atlantic swordfish stock is 289 mt dw. Incidental harvest of swordfish is prohibited in the Atlantic Ocean south of 5° N. lat.

(2) *Inseason adjustments*. (i) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota to reflect actual catches during the June 1 through November 30 semiannual period, provided that the fishing year's directed fishery quota is not exceeded.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quota.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual fishing season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual season will be used to adjust the annual incidental catch quota accordingly.

(iv) NMFS will file with the Office of the Federal Register for publication notification of any inseason swordfish quota adjustment and its apportionment made under this paragraph (c)(2) of this section.

(3) *Annual adjustments*. (i) Except for the carryover provisions of paragraph (c)(3)(ii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tuna, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota shall be subtracted from, or added to, the following year's quota for that area. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication notification of any adjustment or apportionment made under this paragraph (c)(3)(ii).

[64 FR 29135, May 28, 1999, as amended at 64 FR 58796, Nov. 1, 1999; 65 FR 42887, July 12, 2000]

§ 635.28 Closures.

(a) *BFT*. (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) From August 15 through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following BFT fishing season (i.e., August 15 through December 31). Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year.

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes anglers in another area from a reasonable opportunity to harvest a portion of the Angling category quota, NMFS may close all or part of the fishery under that category and may reopen it at a later date if NMFS determines that BFT have migrated into the other area. In determining the need for any

such interim closure or area closure, NMFS will consider:

(i) The usefulness of information obtained from catches of a particular geographic area of the fishery for biological sampling and for monitoring the status of the stock;

(ii) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding 4 years;

(iii) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no interim closure or area closure is effected; and

(iv) The projected ability of the entire category to harvest the remaining amount of BFT before the anticipated end of the fishing season.

(b) *Sharks.* (1) The commercial fishery for large coastal sharks will remain open for fixed semiannual fishing seasons, as specified at §635.27(b)(1)(i). From the effective date and time of a season closure until additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to §635.4.

(2) When a semiannual quota for small coastal sharks or pelagic sharks specified in §635.27(b)(1)(ii) and (b)(1)(iii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication a notice of closure at least 14 days before the effective date. From the effective date and time of the closure until additional quota becomes available, the fishery for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to §635.4.

(3) When the fishery for a shark species group is closed, a fishing vessel issued a shark ILAP or LAP pursuant to §635.4 may not possess or sell a shark of that species group, and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued a shark ILAP or LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

(c) *Swordfish*—(1) *Directed fishery closure.* When the annual or semiannual directed fishery quota specified in §635.27(c)(1)(i) or (ii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure at least 14 days before the effective date. From the effective date and time of the closure until additional directed fishery quota becomes available, the directed fishery for the appropriate stock is closed and the following catch limits apply:

(i) When the directed fishery for the North Atlantic swordfish stock is closed,

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a longline. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline provided the harvesting vessel does no fishing on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, as specified in §635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the Federal Register for publication notification of the change at least 14 days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

(B) No more than 2 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel that has been issued a handgear permit under §635.4(f)(1) provided that such swordfish were not taken with a harpoon.

(ii) When the directed fishery for the South Atlantic swordfish stock is closed, swordfish from that stock taken incidental to fishing for other species may not be retained.

(2) *Incidental catch closure.* When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until an additional incidental catch quota becomes available, no swordfish may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state, and a swordfish in or from the Atlantic Ocean north of 5° N. lat. may not be sold. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline, provided the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, as specified in § 635.69.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999]

§ 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, blue marlin, white marlin, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was harvested. However, an owner or operator of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine category Atlantic Tunas permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

(b) Persons may not transfer a shark or a sailfish at sea shoreward of the outer boundary of the EEZ, regardless of where the shark was harvested, and persons may not transfer at sea a shark or a sailfish taken shoreward of the outer boundary of the EEZ, regardless of where the transfer takes place.

§ 635.30 Possession at sea and landing.

(a) *Atlantic tunas.* Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

(b) *Billfish.* Any person that possesses a blue marlin or a white marlin taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin or a white marlin in an Atlantic coastal port must maintain such billfish with its head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole.

(c) *Shark.* (1) No person shall fin any shark, i.e., remove only the fins and return the remainder of the shark to the sea, shoreward of the outer boundary of the EEZ and on board a vessel for which a commercial vessel permit for shark has been issued. No person shall possess a shark fin on board a fishing vessel after the vessel's first point of landing. No person shall possess or offload wet shark fins in a quantity that exceeds 5 percent of the weight of the shark carcasses. The prohibition on finning applies to all species of sharks in the management unit. For a list of species in the management unit, refer to tables 1 and 2 of appendix A to this part.

(2) Persons that own or operate a vessel that has been issued a commercial permit for shark may not fillet a shark at sea. Persons may eviscerate and remove the head and fins, but must retain the fins with the dressed carcasses. While on board and when offloaded, the wet shark fins may not exceed 5 percent of the weight of the shark carcasses.

(3) Persons that own or operate a vessel that has been issued a commercial permit that lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the weighout slips specified in § 635.5(a)(2). Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing. The wet fins may not exceed 5 percent of the weight of the carcasses.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing—the head, tail, or fins may not be removed. The shark may be bled.

(d) *Swordfish*. Persons that own or operate a fishing vessel that possesses a swordfish in the Atlantic Ocean or lands a swordfish in an Atlantic coastal port must maintain such swordfish in round or dressed form through offloading.

§ 635.31 Restrictions on sale and purchase.

(a) *Atlantic tunas*. (1) Persons that own or operate a vessel that possesses an Atlantic tuna may sell such Atlantic tuna only if that vessel has a valid HMS or Atlantic Tunas Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. Persons may not sell a BFT smaller than the large medium size class. However, a large medium or giant BFT taken by a person on a vessel with an HMS or Atlantic Tunas Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may not be sold (see § 635.23(c)). Persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas issued under this part in the appropriate category.

(3) Dealers or seafood processors may not purchase or sell a BFT smaller than the large medium size class unless it is lawfully imported and is accompanied by a BSD, as specified in § 635.42(a).

(4) A BFT in the possession of a dealer or seafood processor is deemed to be from the Atlantic Ocean. However, a BFT will not be deemed to be from the Atlantic Ocean if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a BSD, as specified in § 635.42(a).

(b) *Billfish*. (1) Persons may not sell or purchase a billfish taken from its management unit.

(2) A billfish or a closely related species, namely, black marlin, *Makaira indica*, striped marlin, *Tetrapturus audax*, or shortbill spearfish, *Tetrapturus angustirostris*, or a part thereof, in the possession of a dealer or seafood processor is considered, for purposes of this part, to be a billfish from the Atlantic Ocean management unit. However, a billfish or a closely related species will not be considered to be from the Atlantic Ocean management unit if–

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a Billfish Certificate of Eligibility that documents that it was harvested from other than the Atlantic Ocean management unit.

(c) *Shark*. (1) Persons that own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial permit for shark issued under this part. Persons may possess and sell a shark only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(2) Persons that own or operate a vessel for which a valid commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell such shark only to a dealer that has a valid permit for shark issued under this part.

(3) Persons that own or operate a vessel for which a valid commercial shark permit has been issued may not sell fins from a shark harvested from the management unit, or harvested in the Atlantic Ocean by a vessel for which a commercial permit for shark has been issued, that are disproportionate to the weight of shark carcasses landed (the wet fins may not exceed 5 percent of the weight of the carcasses).

(4) Only dealers that have a valid permit for shark may purchase a shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial permit for shark issued under this part, except that dealers may purchase a shark from an owner or operator of a

vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(5) Dealers may not purchase from an owner or operator of a fishing vessel shark fins that are disproportionate to the weight of shark carcasses landed (the wet fins may not exceed 5 percent of the weight of the carcasses).

(d) *Swordfish*. (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may sell such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Dealers may purchase a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part.

§ 635.32 Specifically authorized activities.

(a) *General*. Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize for the conduct of scientific research or the acquisition of information and data, for the enhancement of safety at sea, for the purpose of collecting animals for public education or display, or for investigating the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational activities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit or scientific research permit issued in response to requests for authorization under this section. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization.

(b) *Scientific research activities*. For the purposes of all species covered under this part regulated under the authority of ATCA, the provisions for research plans under § 600.745(a) and reports under § 600.745(c)(1) of this chapter are mandatory. In such cases of authorized scientific research activities, NMFS shall issue scientific research permits. For scientific research activities involving the capture of Atlantic sharks, research plans and reports are requested; letters of acknowledgment shall be issued by NMFS as indicated under § 600.745(a) of this chapter.

(c) *Exempted fishing permits*. (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits. Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purposes of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark EFP is required to fish for, take, retain, or possess a shark in or from the Atlantic EEZ for the purposes of public display under the shark public display quota specified in § 635.27(b)(2). A valid shark EFP must be on board the harvesting vessel, must be available when the shark is landed, must be available when the shark is transported to the

display facility, and must be presented for inspection upon request of an authorized officer. A shark EFP is valid for the specific time, area, gear, and species specified on it.

(3) To be eligible for a shark EFP, a person must provide all information concerning his or her identification, numbers by species of sharks to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Written reports on fishing activities and disposition of catch must be submitted to NMFS at an address designated by NMFS, for each fish collected within 5 days of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS at an address designated by NMFS. NMFS will provide specific conditions and requirements, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks in the EFP.

§ 635.33 Archival tags.

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain written authorization from NMFS pursuant to § 635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS at an address designated by NMFS, indicating the type and number of tags, the species and approximate size of the fish as well as any additional information requested in the authorization.

(b) *Landing.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been implanted or affixed, provided such persons comply with the requirements of paragraph (c) of this section.

(c) *Landing report.* Persons that retain an Atlantic HMS that has an archival tag must contact NMFS, prior to or at the time of landing; furnish all requested information regarding the location and method of capture; and, as instructed, remove the archival tag and return it to NMFS or make the fish available for inspection and recovery of the tag by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

(d) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (b) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve quota established for that species.

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23, and the quotas for BFT, shark, and swordfish, as specified in § 635.27.

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; species in the management unit and the specification of the species groups to which they belong; permitting and reporting requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

Subpart D—Restrictions on Imports

§ 635.40 Restrictions to enhance conservation.

(a) *Determinations.* Upon a determination by NMFS that species of fish subject to regulation or under investigation by ICCAT are ineligible for entry into the United States under 16 U.S.C. 971d (c)(4) or (c)(5), NMFS, with the concurrence of the Secretary of State, will file with the Office of the Federal Register for publication a finding to that effect. Effective upon the date of filing of such finding, all shipments of fish in any form of the species found to be ineligible will be denied entry unless, with respect to a particular shipment, it is established by satisfactory proof pursuant to paragraph (b) of this section that the particular shipment of fish is eligible for entry. Entry will not be denied and no such proof will be required for any such shipment that, on the date of filing was in transit to the United States on board a vessel operating as a common carrier.

(b) *Proof of admissibility*. (1) For the purposes of paragraph (a) of this section and section 6(c) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding filed with the Office of the Federal Register for publication under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed ATCA COE attached to the invoice certifying that the fish in the shipment:

(i) Are not of the species specified in the finding;

(ii) Are of the species named in the finding, but were not taken in the regulatory area; or

(iii) Are of the species named in the finding, but are products of an American fishery and were lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the finding solely for transshipment.

(2) If the fish are offered for entry under paragraph (b)(1)(i) or (b)(1)(ii) of this section, the ATCA COE must be executed by a duly authorized official of the country named in the finding and the ATCA COE must be validated by a consular officer or consular agent of the United States. Such validation must be attached to the ATCA COE.

(3) If the fish are offered for entry under paragraph (b)(1)(iii) of this section, the ATCA COE must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The ''Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries'' required by 19 CFR 10.79 must contain a further statement as follows: ''We further declare that the said fish were caught by us in full compliance with part 635, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress.''

(c) *Removal of import restrictions.* Upon a determination by NMFS that the conditions no longer exist that warranted the the finding under paragraph (a) of this section, NMFS will remove the import restriction by filing with the Office of the Federal Register for publication notification of removal effective on the date of filing. However, for 1 year from the date of filing every shipment of fish in any form that was subject to the finding under paragraph (a) of this section will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

§ 635.41 Species subject to documentation requirements.

Imports into the United States and exports or re-exports from the United States of all BFT or BFT products, regardless of ocean area of catch, are subject to the documentation requirements of this subpart.

(a) Documentation is required for BFT identified by the following item numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled BFT, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen BFT, excluding fillets, No. 0303.49.00.20.

(b) In addition, BFT products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

(c) Southern bluefin tuna (*Thunnus maccoyii*) may be allowed entry without the statistical documentation required under this section.

§ 635.42 Documentation requirements.

(a) *BFT imports.* (1) Imports of all BFT products into the United States must be accompanied at the time of entry (filing of Customs Form 7501 or electronic equivalent) by an original completed approved BSD with the information and exporter's certification specified in § 635.43(a). Customs Form 7501 can be obtained by contacting U.S. Customs at http://www.customs.treas.gov/order.htm. Such information must be validated as specified in § 635.44(a) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed).

(2) BFT imported into the United States from a country requiring a BSD tag on all such tuna available for sale must be accompanied by the appropriate BSD tag issued by that country, and said BSD tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the BSD tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or re-export, the BSD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) A dealer who sells BFT that was previously imported into the United States for domestic commercial use must provide on the original BSD that accompanied the import shipment the correct information and importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. The original of the completed BSD must be postmarked and mailed, or faxed, by said dealer to NMFS at an address designated by NMFS within 24 hours of the time the tuna was imported into the United States.

(b) *BFT exports.* (1) A dealer who exports BFT that was harvested by U.S. vessels and first landed in the United States must complete an original numbered BSD issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific export shipment. A dealer must provide on the BSD the correct information and exporter certification specified in § 635.43(a). The BSD must be validated as specified in § 635.44(b). A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. Government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) A dealer who re-exports BFT that was previously imported into the United States through filing an entry summary (Customs Form 7501 or electronic equivalent) must provide on the original BSD that accompanied the import shipment the correct information and intermediate importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. This requirement does not apply to BFT destined from one foreign country to another which transits the United States and for which an entry summary (Customs Form 7501 or electronic equivalent) is not filed and for which a Shipper's Export Declaration for in-transit merchandise (Customs Form 7513 or electronic equivalent) is filed. Customs Form 7513 can be obtained by contacting U.S. Customs at http://www.customs.treas.gov/order.htm.

(3) A dealer must submit the original of the completed BSD to accompany the shipment of BFT to its export or re-export destination. A copy of the BSD completed as specified under paragraph (b)(1) or (b)(2) of this section

must be postmarked and mailed by said dealer to NMFS, at an address designated by NMFS, within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* A dealer must retain at his or her principal place of business a copy of each BSD required to be submitted to NMFS pursuant to this section for a period of 2 years from the date on which it was submitted to NMFS.

§ 635.43 Contents of documentation.

(a) A BSD, to be deemed complete, must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the BFT, regardless of where the tuna is first landed.

(3) The name of the vessel that caught the fish and the vessel's registration number, if applicable.

(4) The name of the owner of the trap that caught the fish, if applicable.

(5) The point of export, which is the city, state or province, and country from which the BFT is first exported.

(6) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet, or other).

(7) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(8) The ocean area from which the fish was harvested (i.e., western Atlantic, eastern Atlantic, Mediterranean, or Pacific).

(9) The weight of each fish (in kilograms for the same product form previously specified).

(10) The identifying BSD tag number, if landed by vessels from countries with tagging programs.

(11) The name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(12) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the BSD.

(13) As applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by each intermediate and the final importer.

(b) An approved BSD may be obtained from NMFS to accompany exports of BFT from the United States. A BFT dealer in a country that does not provide an approved BSD to exporters may obtain an approved BSD from NMFS to accompany exports to the United States.

(c) A dealer who exports bluefin tuna to the United States may use the approved BSD obtainable from NMFS or a document developed by the country of export, if that country submits a copy to the ICCAT Executive Secretariat and NMFS concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, NMFS will provide a list of countries for which BSDs are approved, with examples of approved documents, to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of BFT or BFT products offered for importation from said country(ies) may be accompanied by either that country's approved BSD or by the BSD provided to the foreign country exporter by NMFS.

§ 635.44 Validation requirements.

(a) *Imports.* The approved BSD accompanying any import of BFT, regardless of whether the issuing country is a member of ICCAT, must be validated by a government official from the issuing country, unless NMFS waives this requirement for that country following a recommendation to do so by the ICCAT Secretariat. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service.

Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate BSDs for that country.

(b) *Exports.* The approved BSD accompanying any export of BFT from the United States must be validated by a U.S. Government official, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to the permitted dealer from NMFS. Any waiver of government validation will be consistent with ICCAT recommendations concerning validation of BSDs. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual BSD tags affixed pursuant to § 300.26 of this title or § 635.5(b)(2)(ii); or

(2) Validation by non-government officials authorized to do so by NMFS under paragraph (c) of this section.

(c) *Authorization for non-government validation.* An institution or association seeking authorization to validate BSDs accompanying exports from the United States must apply in writing to the Director for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform validation, and provide an example of the stamp or seal to be applied to the BSD. NMFS, upon finding the institution or association capable of verifying the information required on the BSD, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate BSDs accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the ICCAT Secretariat of non-government institutions and associations authorized to validate BSDs.

§ 635.45 Import restrictions for Belize, Honduras, and Panama.

All shipments of BFT or BFT products in any form harvested by a vessel of Belize, Honduras, or Panama will be denied entry into the United States.

§ 635.46 Import restrictions on swordfish.

(a) *General.* To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 635.20(e) may not be imported, or attempted to be imported, into the United States unless it is accompanied by the swordfish certificate of eligibility as specified in paragraph (b) of this section attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish, harvested from the Atlantic Ocean, that weighed at least 33 lb (15 kg) dw at harvest.

(b) *Swordfish COE.* (1) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a swordfish COE. A swordfish COE is required for swordfish identified by any item number from the Harmonized Tariff Schedule including but not limited to the following:

(i) Fresh or chilled swordfish steaks, No. 0302.69.20.41.

(ii) Fresh or chilled swordfish, excluding steaks, No. 0302.69.20.49.

(iii) Frozen swordfish steaks, No. 0302.79.20.41.

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(v) Frozen swordfish, fillets, No. 0304.20.60.92.

(2) The swordfish COE required under this section must indicate, in English, the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish or parts thereof less than the minimum size specified at § 635.20(e), the reason such swordfish is eligible for entry, as specified in paragraph (a) of this section. The swordfish COE shall be attached to the invoice accompanying the swordfish shipment from the point of original export up to and including the point of first transaction in the United States.

(3) The swordfish COE required under this section must include, in English, the date, the name, the title of the governmental official or other authorized

person, and the name of the authorizing government agency of the country exporting the swordfish to the United States. The swordfish COE must be signed and dated by that governmental official or authorized person with an official government seal affixed, thus validating the information on the COE. (4) A swordfish COE may refer to swordfish taken from only one ocean area of harvest (i.e., Atlantic, Pacific, Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate swordfish COE must accompany the shipment for each ocean area of harvest and for each flag nation of the harvesting vessels.

(5) A model swordfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all the information required under this section.

(6) The importer must write the Customs Form 7501 entry number on each swordfish COE and attach to the dealer report form all swordfish COEs from shipments that are recorded on the biweekly dealer report form.

§ 635.47 Ports of entry.

NMFS shall monitor the importation of BFT and swordfish into the United States. If NMFS determines that the diversity of handling practices at certain ports at which BFT or swordfish is being imported into the United States allows for circumvention of the BSD or swordfish COE requirement, NMFS may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna or swordfish from any source may be imported into the United States. NMFS shall announce through filing with the Office of the Federal Register for publication the names of ports so designated and the effective dates of entry restrictions.

Subpart E–International Port Inspection

§ 635.50 Basis and purpose.

The regulations in this subpart implement the ICCAT port inspection scheme. The text of the ICCAT port inspection scheme may be obtained from NMFS.

§ 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to serve as an authorized inspector for ICCAT, and who possesses identification issued by the authorized officer's national government.

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party.

(b) A vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, that is registered by any of the ICCAT contracting parties, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping regulated species or when making a port call in the United States.

(c) The master of a vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, must cooperate with an authorized officer during the conduct of an inspection in national and foreign ports. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

§ 635.53 Reports.

(a) Apparent violations shall be reported by the authorized officer on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The authorized officer must sign the form in the presence of the

master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel and to the ICCAT Secretariat within 10 days. Flag states will consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

Subpart F–Enforcement

§ 635.69 Vessel monitoring systems.

(a) *Applicability*. To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic longline is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board. A vessel is considered to have pelagic longline gear on board for the purposes of this section, when gear as specified at § 635.21(c) is on board.

(b) *Hardware specifications*. The VMS hardware must be approved by NMFS and must be able to perform all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS units. As necessary, NMFS will make additions and/or amendments to the VMS hardware type approval list to account for changes in specifications or new products offered by manufacturers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(c) *Communications specifications*. The communications service provider must be approved by NMFS and must be able to provide all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS communications service providers. As necessary, NMFS will make additions and/or amendments to the VMS communications service providers type approval list to account for changes in specifications or new services offered by communications providers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(d) *Installation and service activation*. When installing and activating the NMFS-approved VMS unit, a vessel owner or operator must follow procedures indicated on an installation and activation checklist obtained from NMFS. Re-installation shall require the same checklist. Upon completion of installation, the vessel owner must sign a statement certifying compliance with the installation procedures of the checklist and submit such certification to NMFS as indicated on the checklist. Vessels fishing prior to submission of the certification will be in violation of the VMS requirement.

(e) *Operation*. Owners or operators of vessels permitted, or required to be permitted, to fish for HMS that have pelagic longline gear on board, must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and not ending until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(f) *Interruption*. When the vessel operator is aware that transmission of automatic position reports has been interrupted, or when notified by NMFS that automatic position reports are not being received, the vessel operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable.

(g) *Repair and replacement*. After a fishing trip during which interruption

of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider shall be in accordance with the checklist provided by NMFS and require the same certification.

(h) *Access.* As a condition to obtaining a limited access permit for Atlantic swordfish, sharks or tunas, all vessel owners or operators using pelagic longline gear subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 65 FR 47238, Aug. 1, 2000]

§ 635.70 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna.* Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

§ 635.71 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.16.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, or EFP on board the vessel, as specified in §§ 635.4 and 635.32.

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS without the appropriate valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell or transfer or attempt to sell or transfer an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(5) Fail to possess and make available for inspection a vessel permit on board the permitted vessel or upon transfer of HMS to a dealer or a dealer permit at the dealer's place of business, or to alter any such permit as specified in § 635.4(a).

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(f).

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(g).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(10) Falsify or fail to display and maintain vessel and gear identification, as specified in § 635.6.

(11) Fail to comply with the requirements for at-sea observer coverage, as specified in § 635.7 and § 600.746.

(12) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in

connection with enforcement of this part.

(13) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

(14) Fail to install, activate, repair or replace a vessel monitoring system prior to leaving port with pelagic longline gear on board the vessel as specified in § 635.69.

(15) Tamper with, or fail to operate and maintain a vessel monitoring system as specified in § 635.69.

(16) Fail to contact NMFS or follow NMFS instructions when automatic position reporting has been interrupted as specified in § 635.69.

(17) Fish for Atlantic tunas or swordfish with a gillnet for or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.21 (b), (d)(1), and (d)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21(c)(3).

(19) Fail to release an Atlantic HMS in the manner specified in § 635.21(a).

(20) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in § 635.33.

(21) Fail to maintain an Atlantic HMS in the form specified in § 635.30.

(22) Fish for, catch, retain, or possess an Atlantic HMS that is less than its minimum size limit specified in § 635.20.

(23) Fail to comply with the restrictions on use of a pelagic longline or shark gillnet as specified in § 635.21 (c) and (d)(3)(ii) and (iii).

(24) Import any BFT or swordfish in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 635.47.

(25) Dispose of fish or parts thereof or other matter in any manner after any communication or signal from an authorized officer, or after the approach of an authorized officer.

(26) Violate the terms and conditions or any provision of an exempted fishing permit or scientific research permit issued under the authority of § 635.32.

(27) Operate a charterboat or headboat without a valid U.S. Coast Guard merchant marine or uninspected passenger vessel license on board the vessel when fishing for or possessing Atlantic HMS as specified at § 635.4(c)(2).

(28) Violate any provision of this part, the Magnuson-Stevens Act, ATCA, or any regulations or permits issued under the Magnuson-Stevens Act or ATCA.

(29) Fail to comply with the restrictions on importing HMS as specified at §§ 635.40, 635.41 and 635.46.

(30) Deploy or fish with a pelagic longline greater than the maximum length authorized for any area specified at § 635.21(c)(1).

(31) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board in any closed area during the time periods specified at § 635.21(c)(2).

(32) In the Gulf of Mexico, deploy or fish a pelagic longline with live bait affixed to the hooks or to possess live bait, or set up a well or tank to maintain live bait, aboard a vessel with pelagic longline gear on board as specified at § 635.21(c)(4).

(b) *Atlantic tunas.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Engage in fishing with a vessel that has a permit for Atlantic tuna under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel or on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

(2) Import or export bluefin tuna without a dealer permit, as specified in § 635.4(a)(4) and (g)(1).

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a vessel other than one that has on board an Angling category Atlantic tunas permit, an HMS or Atlantic Tunas Charter/Headboat permit, or a Purse Seine category Atlantic tunas permit as authorized under § 635.23 (b), (c), and (e)(2).

(4) Fail to inspect a vessel's permit, fail to affix a dealer tag to a large medium or giant BFT, or fail to use such tag as specified in §635.5(b)(2).

(5) Fail to report a large medium or giant BFT that is not sold, as specified in §635.5(a)(3) and §635.5(c).

(6) As an angler, fail to report a BFT, as specified in §635.5(a)(3).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in §635.21(d)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in §635.21(d)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under §635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets from August 15 through December 31 if there is no remaining BFT allocation made under §635.27 (a)(4).

(11) Exceed the recreational catch limit for yellowfin tuna, as specified in §635.22(d).

(12) Exceed a catch limit for BFT specified for the appropriate permit category, as specified in §635.23.

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in §635.23(a)(3).

(14) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in §635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT after fishing under the circumstances specified in §635.23(b)(1)(iii) and (c)(1) through (3).

(16) Retain a BFT caught under the catch and release program specified in §635.26.

(17) As a vessel with a Purse Seine category Atlantic tuna permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to August 15, as specified in §635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under §635.23(e)(2).

(19) Fish for, retain, possess, or land a BFT when the fishery is closed, as specified in §635.28(a), except as may be authorized for catch and release under §635.26.

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in §635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirements for weighing, measuring, and information collection specified in §635.30(a)(2).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under §635.23(f)(1), or if taken incidental to recreational fishing for other species and retained in accordance with §635.23(b) and (c).

(24) Fail to comply with the restrictions on sale and purchase of an Atlantic tuna, as specified in §§635.5(b), 635.23, and 635.31(a).

(25) Fail to comply with the documentation requirements for imported or exported BFT or BFT products, as specified in §635.42.

(26) Import a BFT or BFT product into the United States from Belize, Panama, or Honduras other than as authorized in §635.45.

(27) For any person to refuse to provide information requested by NMFS

personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic tunas.

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(d)(2).

(2) Transfer a billfish at sea, as specified in § 635.29(a).

(3) Fail to maintain a billfish in the form specified in § 635.30(b).

(4) Sell or purchase a billfish, as specified in § 635.31(b).

(5) Retain on board a vessel a longbill spearfish, or a blue marlin, white marlin or sailfish that is less than the minimum size specified in § 635.20(d).

(d) *Shark*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Exceed a recreational retention limit for shark, as specified in § 635.22(c).

(2) Exceed a commercial retention limit for shark, as specified in § 635.24(a).

(3) Retain, possess, or land a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(1) and (b)(2).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(3).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Remove the fins from a shark listed in tables 1 and 2 in appendix A to this part, and discard the remainder, or otherwise fail to maintain a shark in its proper form, as specified in § 635.30(c)(1) through (c)(4).

(7) Have on board a fishing vessel, sell, or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (c)(3).

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c)(3).

(9) Fail to comply with the restrictions on sale and purchase of a shark, as specified in § 635.31(c).

(10) Retain, possess, sell, or purchase a prohibited shark.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an ILAP for shark.

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21(d)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(d)(3).

(e) *Swordfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock or import a swordfish harvested from any ocean area without a dealer permit, as specified in § 635.4(g)(3).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(3) When the directed fishery for swordfish is closed, exceed the limits specified in § 635.28(c)(1)(i) and (c)(1)(ii).

(4) When the incidental catch fishery for swordfish is closed, possess, land, sell, or purchase a swordfish, as specified in § 635.28(c)(2).

(5) Transfer at sea a swordfish, as specified in § 635.29(a).

(6) Fail to maintain a swordfish in the form specified in § 635.30(d).

(7) Fail to comply with the restrictions on sale and purchase of a swordfish, as specified in § 635.31(d).

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear.

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fail to comply with the documentation requirements for the importation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 635.46.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support

of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for swordfish.

(12) Falsify information submitted under §635.46(b) in support of entry of imported swordfish.

(13) Exceed the incidental catch retention limits specified at §635.24(b).

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 65 FR 42887, July 12, 2000; 65 FR 47238, Aug. 1, 2000]

APPENDIX A TO PART 635—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 635–OCEANIC SHARKS

A. Large coastal sharks:

1. Ridgeback sharks:

Sandbar, *Carcharhinus plumbeus*
Silky, *Carcharhinus falciformis*
Tiger, *Galeocerdo cuvieri*

2. Non-ridgeback sharks:

Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*

B. Small coastal sharks:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

C. Pelagic sharks:

Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*.

D. Prohibited sharks:

Atlantic angel, *Squatina dumerili*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus vitulus*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezi*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Odontaspis taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

TABLE 2 OF APPENDIX A TO PART 635–DEEPWATER/OTHER SHARK SPECIES

Blotched catshark, *Scyliorhinus meadi*
Broadgill catshark, *Apristurus riveri*
Chain dogfish, *Scyliorhinus retifer*
Deepwater catshark, *Apristurus profundorum*
Dwarf catshark, *Scyliorhinus torrei*
Iceland catshark, *Apristurus laurussoni*
Marbled catshark, *Galeus arae*
Smallfin catshark, *Apristurus parvipinnis*
Bigtooth cookiecutter, *Isistius plutodus*
Blainville's dogfish, *Squalus blainvillei*
Bramble shark, *Echinorhinus brucus*
Broadband dogfish, *Etmopterus gracilispinnis*
Caribbean lanternshark, *Etmopterus hillianus*
Cookiecutter shark, *Isistius brasiliensis*
Cuban dogfish, *Squalus cubensis*
Flatnose gulper shark, *Deania profundorum*
Fringefin lanternshark, *Etmopterus schultzi*
Great lanternshark, *Etmopterus princeps*
Green lanternshark, *Etmopterus virens*
Greenland shark, *Somniosus microcephalus*
Gulper shark, *Centrophorus granulosus*
Japanese gulper shark, *Centrophorus acuus*
Kitefin shark, *Dalatias licha*
Lined lanternshark, *Etmopterus bullisi*
Little gulper shark, *Centrophorus uyato*
Portuguese shark, *Cetroscymnus coelolepis*
Pygmy shark, *Squaliolus laticaudus*
Roughskin spiny dogfish, *Squalus asper*
Smallmouth velvet dogfish, *Scymnodon obscurus*
Smooth lanternshark, *Etmopterus pusillus*
American sawshark, *Pristiophorus schroederi*
Florida smoothhound, *Mustelus norrisi*
Smooth dogfish, *Mustelus canis*

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.
640.1 Purpose and scope.
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FIGURES—PART 640

FIGURE 1—CARAPACE LENGTH

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

Subpart A—General Provisions

§ 640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this part 640, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

[57 FR 56518, Nov. 30, 1992]

§ 640.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bully net means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

Carapace length means the measurement of the carapace (head, body, or front section) of a spiny lobster from the anteriormost edge (front) of the groove between the horns directly above the eyes, along the middorsal line (middle of the back), to the rear edge of the top part of the carapace, excluding any translucent membrane.

Commercial fishing means any fishing or fishing activities which result in the harvest of any marine or freshwater organisms, one or more of which (or parts thereof) is sold, traded, or bartered.

Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

Off Florida means the area from the Florida coast to the outer limit of the EEZ between the Georgia/Florida boundary (30°42′45.6″N. latitude) and the Alabama/Florida boundary (87°31′06″W. longitude).

Off the Gulf states, other than Florida means the area from the coast to the outer limit of the EEZ between the Texas/Mexico border to the Alabama/Florida boundary (87°31′06″ W. long.).

Off Monroe County, Florida means the area from the Florida coast to the outer limit of the EEZ between a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4′N. latitude) and a line extending directly west from the Monroe/Collier County, Florida boundary (25°48.0′N. latitude).

Off the southern Atlantic states, other than Florida means the area from the coast to the outer limit of the EEZ between the Virginia/North Carolina boundary (36°34′55″ N. lat.) to the Georgia/Florida boundary (30°42′45.6″ N. lat.).

Recreational fishing means fishing or fishing activities which result in the harvest of fish, none of which (or parts thereof) is sold, traded, or bartered.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

Slipper (Spanish) lobster means the species *Scyllarides nodifer.*

Spiny lobster means the species *Panulirus argus.*

Tail length means the lengthwise measurement of the entire tail (segmented portion), not including any protruding muscle tissue, of a spiny lobster along the top middorsal line (middle of the back) to the rearmost extremity. The measurement is made with the tail in a flat, straight position with the tip of the tail closed.

Trip means a fishing trip, regardless of number of days' duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 17196, May 16, 1988; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988; 55 FR 26448, June 28, 1990; 57 FR 56518, Nov. 30, 1992; 58 FR 38979, July 21, 1993; 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995]

§ 640.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) The regulations in this part apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and South Atlantic EEZ.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 24655, June 29, 1988]

§ 640.4 Permits and fees.

(a) *Applicability*—(1) *Licenses, certificates, and permits*—(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a ''commercial harvester,'' as defined in Rule 46–24.002(2), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(ii) *EEZ other than off Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested in the EEZ other than off Florida or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, a Federal vessel permit must be issued to the harvesting vessel and must be on board. However, see paragraph (a)(1)(i) of this section for the licenses and certificates required for a person to possess or land spiny lobster harvested in the EEZ other than off Florida and subsequently possessed in the EEZ off Florida or landed from a fishing vessel in Florida.

(2) *Tail-separation permits.* For a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ, a tail-separation permit must be issued to the vessel and must be on board.

(3) *Corporation/partnership-owned vessels.* For a vessel owned by a corporation or partnership to be eligible for a Federal vessel permit specified in paragraph (a)(1)(ii) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) *Operator-qualified permits.* A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Applications for permits.* (1) An application for a Federal vessel and/or tail-separation permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a

partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section and the operator does meet that qualification, the name, mailing address including zip code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(vi) A sworn statement by the applicant for a vessel permit certifying that at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, during the calendar year preceding the application.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) If a tail-separation permit is desired, a sworn statement by the applicant certifying that his or her fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the 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.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer*. A permit issued pursuant to this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display*. A permit issued pursuant to this section must be carried on board the vessel, and such vessel must be identified as required by § 640.6. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials*. A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration*. A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement*. A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

[57 FR 56518, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995]

§ 640.5 Recordkeeping and reporting. [Reserved]

§ 640.6 Vessel and gear identification.

(a) *EEZ off Florida*. (1) An owner or operator of a vessel that is used to harvest spiny lobsters by traps in the EEZ off Florida must comply with the vessel and gear identification requirements applicable to the harvesting of spiny lobsters by traps in Florida's waters in sections 370.14(2)(a) and (3) and 370.142(2)(b), Florida Statutes, in effect as of July 1, 1994, and in Rule 46–24.006(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 46–24.006(6), Florida Administrative Code, in effect as of June 1, 1994.

(3) The incorporation by reference in paragraphs (a)(1) and (a)(2) of this section of sections 370.14(2)(a) and (3) and 370.142(2)(b), Florida Statutes, and Rule 46–24.006(3), (4), (5), and (6), Florida Administrative Code, was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(b) *EEZ other than off Florida*. (1) The owner or operator of a vessel that is used to harvest spiny lobsters in the EEZ other than off Florida, must meet the following vessel and gear identification requirements:

(i) The vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number must be permanently and conspicuously displayed horizontally on the uppermost structural portion of the vessel in numbers at least 10 inches (25.4 cm) high so as to be readily identifiable from the air and water;

(ii) If the vessel uses spiny lobster traps in the EEZ, other than off Florida—

(A) The vessel's color code, as assigned by Florida or, if a color code has not been assigned by Florida, as assigned by the Regional Director, must be permanently and conspicuously displayed above the number specified in paragraph (b)(1)(i) of this section so as to be readily identifiable from the air and water, such color code being in the form of a circle at least 20 inches (50.8 cm) in diameter on a background of colors contrasting to those contained in the assigned color code;

(B) A buoy or timed-release buoy of such strength and buoyancy to float

must be attached to each spiny lobster trap or at each end of a string of traps;

(C) A buoy used to mark spiny lobster traps must bear the vessel's assigned color code and be of such color, hue, and brilliancy as to be easily distinguished, seen, and located;

(D) A buoy used to mark spiny lobster traps must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number in numbers at least 2 inches (5.08 cm) high; and

(E) A spiny lobster trap must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number permanently and legibly affixed.

(2) A spiny lobster trap in the EEZ, other than off Florida, will be presumed to be the property of the most recently documented owner. Upon the sale or transfer of a spiny lobster trap used in the EEZ, other than off Florida, within 5 days of acquiring ownership, the person acquiring ownership must notify the Florida Division of Law Enforcement of the Department of Environmental Protection, for a trap that bears a Florida crawfish license or trap number, or the Regional Director, for a trap that bears a Federal vessel permit number, as to the number of traps purchased, the vendor, and the crawfish license or trap number, or Federal vessel permit number, currently displayed on the traps, and must request issuance of a crawfish license or trap number, or Federal vessel permit, if the acquiring owner does not possess such license or trap number or permit.

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

[57 FR 56519, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995]

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ without a required license, certificate, or permit, as specified in § 640.4(a)(1).

(b) Falsify information specified in § 640.4(b)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 640.4(h).

(d) Falsify or fail to display and maintain vessel and gear identification, as required by § 640.6 (a) and (b).

(e) Possess a spiny lobster trap in the EEZ at a time not authorized, as specified in § 640.20(b)(3)(i) and (b)(3)(ii).

(f) Possess a spiny lobster in or from the EEZ at a time not authorized, as specified in § 640.20(b)(4).

(g) Fail to return immediately to the water a berried spiny lobster or slipper lobster; strip eggs from or otherwise molest a berried spiny lobster or slipper lobster; or possess a spiny lobster or slipper lobster, or part thereof, from which eggs, swimmerettes, or pleopods have been removed or stripped; as specified in § 640.21(a).

(h) Possess or fail to return immediately to the water unharmed a spiny lobster smaller than the minimum size limits specified in § 640.21 (b)(1) and (b)(3), except as provided in § 640.21(c).

(i) Harvest or attempt to harvest a spiny lobster by diving without having and using in the water a measuring device, or fail to release an undersized spiny lobster in the water, as specified in § 640.21(b)(2).

(j) Possess an undersized spiny lobster for use as an attractant in a trap in quantities or under conditions not authorized in § 640.21(c).

(k) Possess a separated spiny lobster tail, except as specified in § 640.21(d).

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance; as specified in § 640.20(b) and § 640.22 (a)(1) and (a)(3).

(m) Use or possess in the EEZ a spiny lobster trap that does not meet the requirements specified in § 640.22(b)(1).

(n) Pull or tend a spiny lobster trap other than during daylight hours, as specified in § 640.22(b)(2).

(o) Pull or tend another person's spiny lobster trap, except as authorized in § 640.22(b)(3).

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23 (a), (b)(1), or (b)(2) except as authorized in § 640.23(b)(3) and (b)(4).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(b)(4).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag and possession limit, as specified in § 640.23(d).

(s) Transfer or receive at sea spiny lobster in or from the EEZ caught under the bag and possession limits, as specified in § 640.23(e).

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(u) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a spiny lobster.

[57 FR 56520, Nov 30, 1992, as amended at 58 FR 38979, July 21, 1993; 58 FR 61845, Nov. 23, 1993; 59 FR 53119, Oct. 21, 1994; 60 FR 41831, Aug. 14, 1995]

§ 640.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 640.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

SOURCE: 57 FR 56520, Nov. 30, 1992, unless otherwise noted.

§ 640.20 Seasons.

(a) *EEZ off the southern Atlantic states, other than Florida.* In the EEZ off the southern Atlantic states, other than Florida, there are no seasonal restrictions on the harvest of spiny lobster or on the possession of traps.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ off Florida and the EEZ off the Gulf states, other than Florida, begins on August 6 and ends on March 31.

(2) *Special recreational fishing seasons*—(i) *EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 640.22(a) for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(ii) *EEZ off the Gulf states, other than Florida.* There is a 2-day special recreational fishing season in the EEZ off the Gulf states, other than Florida, during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 640.22(a) for general prohibitions on gear and methods.)

(3) *Possession of traps.* (i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 46–24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver

Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(ii) In the EEZ off the Gulf states, other than Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season, which is specified in paragraph (b)(1) of this section beginning on August 1 and must be removed from the water after such season not later than April 5.

(iii) A spiny lobster trap, buoy, or rope in the EEZ off Florida or in the EEZ off the Gulf states, other than Florida, during periods not authorized in paragraphs (b)(3)(i) and (b)(3)(ii) of this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(4) *Possession of spiny lobsters.* In the EEZ off Florida and the Gulf states, a whole or a part of a spiny lobster subject to these regulations may only be possessed during the commercial and recreational fishing season and the special recreational fishing season specified in § 640.20, unless accompanied by proof of lawful harvest in the waters of a foreign nation. Consistent with the provisions of paragraphs (b)(3)(i) and (ii) of this section, a spiny lobster in a trap in this area will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed when a trap is removed from the water between March 31 and April 15.

(c) *Primacy of seasonal restrictions in the EEZ off Florida.* The seasonal restrictions applicable in the EEZ off Florida apply to all spiny lobsters and traps in the EEZ off Florida, without regard to harvest or use elsewhere, unless accompanied by proof of lawful harvest elsewhere.

[60 FR 41831, Aug. 14, 1995]

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) spiny lobster or slipper lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster or slipper lobster may not be retained in the trap. A berried spiny lobster or slipper lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster or slipper lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

(b) *Minimum size limits.* (1) Except as provided in paragraph (c) of this section—

(i) No person may possess a spiny lobster in or from the EEZ with a carapace length of 3.0 inches (7.62 cm) or less; and

(ii) A spiny lobster, harvested in the EEZ by means other than diving, with a carapace length of 3.0 inches (7.62 cm) or less must be returned immediately to the water unharmed.

(2) No person may harvest or attempt to harvest a spiny lobster by diving in the EEZ unless he or she possesses, while in the water, a measuring device capable of measuring the carapace length. A spiny lobster captured by a diver must be measured in the water using such measuring device and, if the spiny lobster has a carapace length of 3.0 inches (7.62 cm) or less, it must be released unharmed immediately without removal from the water.

(3) Aboard a vessel authorized under paragraph (d) of this section to possess a separated spiny lobster tail, no person may possess in or from the EEZ a separated spiny lobster tail with a tail length less than 5.5 inches (13.97 cm).

(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (b)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than fifty undersized spiny lobsters, or one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of ¾ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to one hour after official sunset each day.

(d) *Tail separation.* The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a Federal tail-separation permit specified in § 640.4(a)(2) has been issued to and is on board the vessel.

[57 FR 56520, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994]

§ 640.22 Gear and diving restrictions.

(a) *Prohibited gear and methods.* (1) A spiny lobster may not be taken in the EEZ with a spear, hook, or similar device, or gear containing such devices. In the EEZ, the possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence that prohibited gear was used to take such lobster. Hook, as used in this paragraph (a)(1), does not include a hook in a hook-and-line fishery for species other than spiny lobster; and possession of a spiny lobster that has been speared, pierced, or punctured by such hook is not considered evidence that prohibited gear was used to take the spiny lobster, provided no prohibited gear is on board the vessel.

(2) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 640.23(d) for the bycatch limits applicable to a vessel that uses or has on board a net or trawl.

(3) Poisons and explosives may not be used to take a spiny lobster or slipper lobster in the EEZ. For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster or slipper lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

(b) *Traps.* (1) In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(2) A spiny lobster trap in the EEZ may be pulled or tended during daylight hours only, that is, from 1 hour before official sunrise to 1 hour after official sunset.

(3) A spiny lobster trap in the EEZ may be pulled or tended only by the owner's vessel, or by a vessel for which permission to pull or work traps belonging to another person has been granted—

(i) For traps in the EEZ off Florida, by the Florida Division of Law Enforcement, Department of Environmental Protection, in accordance with the procedures in Rule 46-24.006(7), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(ii) For traps in the EEZ, other than off Florida, by the Regional Director, as may be arranged upon written request.

[57 FR 56520, Nov. 30, 1992, as amended at 58 FR 38980, July 21, 1993; 60 FR 41831, Aug. 14, 1995]

§ 640.23 Bag/possession limits.

(a) *EEZ off the southern Atlantic states, other than Florida.* The daily bag or possession limit for spiny lobster in or from the EEZ off the southern Atlantic states, other than Florida, is two per person for commercial and recreational fishing, year-round.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, during the commercial and recreational fishing season specified in § 640.20(b)(1), the daily bag

or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 640.20(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.* During the commercial and recreational fishing season specified in § 640.20(b)(1), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 640.4(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 640.20(b)(1), aboard a vessel with the required licenses, certificates, or permits specified in § 640.4(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term ''net or trawl'' does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 640.4(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(c) *Combination of bag/possession limits.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not combine the bag or possession limits of those paragraphs or combine such bag or possession limit with a bag or possession limit applicable to state waters.

(d) *Responsibility for bag/possession limits.* The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the cumulative bag or possession limit specified in paragraphs (a) and (b) of this section applicable to that vessel, based on the number of persons aboard.

(e) *Transfer at sea.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not transfer a spiny lobster at sea from a fishing vessel to any other vessel, and no person may receive at sea such spiny lobster.

[60 FR 41831, Aug. 14, 1995]

§ 640.24 Authorized activities.

The Assistant Administrator may authorize, for the acquisition of information and date, activities otherwise prohibited by the regulations in this part.

[57 FR 56520, Nov. 30, 1992, as amended at 60 FR 41832, Aug. 14, 1995]

§ 640.25 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RA may establish or modify the following items: definitions of essential fish habitat, Essential Fish Habitat-Habitat Areas of Particular Concern, Coral-Habitat Areas of Particular Concern, biomass levels, age-structured analyses, limits on the number of traps

fished by each vessel, construction characteristics of traps, specification of gear and vessel identification requirements, specification of allowable or prohibited gear in a directed fishery, specification of bycatch levels in non-directed fisheries, changes to soak or removal periods and requirements for traps, recreational bag and possession limits, changes in fishing seasons, limitations on use, possession, and handling of undersized lobsters, and changes in minimum size.

[65 FR 37296, June 14, 2000]

PART 644 [RESERVED]

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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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 (FMPs) 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 and monkfish fisheries (NE Multispecies FMP) and (Monkfish FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); and the spiny dogfish fishery (Spiny Dogfish 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; 65 FR 1568, Jan. 11, 2000]

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

Bonito means *Sarda sarda*.

Brush-sweep trawl gear means trawl gear consisting of alternating roller discs and bristle brushes that are strung along cables, chains, or footropes, and aligned together to form the sweep of the trawl net, designed to allow the trawl sweep to maintain contact with the ocean floor, or any modification to trawl gear that is substantially similar in design or effect.

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft^3 (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 ft^3 (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 *Tautogolabrus 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; the Atlantic bluefish fishery; and the spiny dogfish fishery.

Councils with respect to the monkfish fishery and spiny dogfish fishery means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries, and Atlantic sea scallop fishery, except as described in §648.82(k)(1)(iv), means the 24-hour period of time or

any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses, or lands, regulated species, monkfish, 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, unless otherwise exempted in 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 Atlantic sea scallop fishery, from March 1 through the last day of February of the following year.

(2) For the NE multispecies and monkfish fisheries, 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 ⅜-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, also known as *anglerfish* or *goosefish*, means *Lophius americanus*.

Monkfish gillnets means gillnet gear with mesh size no smaller than 10–inches (25.4 cm) diamond mesh that is designed and used to fish for and catch monkfish while fishing under a monkfish DAS.

Monkfish Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC and MAFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Regional Office, NEFSC, the USCG, two fishing industry representatives selected by their respective Council chairman (one from each management area with at least one of the two representing either the Atlantic sea scallop or northeast multispecies fishery), and staff from affected coastal states, appointed by the Atlantic States Marine Fisheries Commission. The Chair is elected by the Committee from within its ranks, subject to the approval of the Chairs of the NEFMC and MAFMC.

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).

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

American plaice—*Hippoglossoides platessoides*.
Atlantic cod—*Gadus morhua*.
Atlantic halibut—*Hippoglossus hippoglossus*.
Haddock—*Melanogrammus aeglefinus*.
Ocean Pout—*Macrozoarces americanus*.
Offshore Hake—*Merluccius albidus*.
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 ferruginea*.

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 sling 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 monkfish fishery means the period of time during which a vessel is not fishing for monkfish under the monkfish DAS program.

Out of the multispecies fishery means the period of time during which a vessel 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, with respect to the call-in notification system for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, means prior to the last dock or mooring in port from which a vessel departs 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 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.

Small-mesh multispecies means the subset of Northeast multispecies that

includes silver hake, offshore hake, and red hake.

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.*

Spiny Dogfish Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, and the states, as well as two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

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 or *tying up at a dock* means tied up at a dock, on a mooring, or elsewhere 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, means, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, upon first tying up at a dock 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 or VMS unit as set forth in § 648.9 and approved by NMFS for use by Atlantic sea scallop, NE multispecies, and monkfish 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.*

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small-mesh multispecies. The team consists of staff from

the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 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 management 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 vessels'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'', or ''charter/party'' permit and may fish for, possess on board, 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 on board, 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 vessels 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.* (*1*) 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)(*1*) 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.

(ii) *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 butterfish, 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, except

for vessels that exceed either 165 feet in length overall (LOA) and 750 gross registered tons, or a shaft horsepower of 3000 shp. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified under §648.6(a)(2).

(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 butterfish 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 vessels.* (i) *Commercial.* Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels.* Any party or charter boat must have been issued and carry on board a valid party or charter boat permit to fish for, possess, or land Atlantic bluefish in or from the EEZ if it is carrying passengers for hire. Persons on board such vessel must observe the possession limits established pursuant to § 648.164, and the prohibitions on sale specified in § 648.14(w).

(9) *Monkfish vessels.* Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish permit to fish for, possess, or land any monkfish in or from the EEZ.

(i) *Limited access monkfish permits (effective November 8, 1999.* (A) *Eligibility*. A vessel may be issued a limited access monkfish permit if it meets any of the following limited access monkfish permits criteria:

(*1*) *Category A permit (vessels without multispecies or scallop limited access permits).* The vessel landed ≥50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*2*) *Category B permit (vessels less than 51 gross registered tonnage (GRT) without multispecies or scallop limited access permits that do not qualify for a Category A permit).* The vessel landed ≥7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*3*) *Category C permit (vessels with multispecies or scallop limited access permits).* The vessel landed ≥50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995; or

(*4*) *Category D permit (all vessels with multispecies limited access permits and vessels less than 51 GRT with scallop limited access permits that do not qualify for a Category C permit).* The vessel landed ≥7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995.

(B) *Application/renewal restrictions.* No one may apply for an initial limited access monkfish permit for a vessel after November 7, 2000.

(C) *Qualification restrictions.* (*1*) See paragraph (a)(1)(i)(C) of this section.

(*2*) *Vessels under agreement for construction or under reconstruction.* A vessel may be issued a limited access monkfish permit if the vessel was under written agreement for construction or reconstruction between February 28, 1994, and February 27, 1995, and such vessel meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(D) *Change in ownership.* (*1*) See paragraph (a)(1)(i)(D) of this section.

(*2*) A vessel may be issued a limited access monkfish permit if it was under written agreement for purchase as of February 27, 1995 and meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(E) *Replacement vessels.* (*1*) See paragraph (a)(1)(i)(E) of this section.

(*2*) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(*2*) or (*4*) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's

history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel.* (*1*) See paragraph (a)(1)(i)(F) of this section.

(*2*) A vessel ≥51 GRT that upgraded from a vessel size <51 GRT between February 27, 1995, and October 7, 1999, that meets any of the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraphs (a)(9)(i)(A)(*2*) and (*4*) of this section, may qualify for and fish under the permit category of the smaller vessel.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specification.* See paragraph (a)(1)(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.* A limited access monkfish permit may not be issued to a vessel or to 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) *Notification of eligibility for 1999.* (*1*) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet the qualification criteria described in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section and that they qualify for a limited access monkfish permit. Vessel owners must still apply within 12 months of the effective date of these regulations to complete the qualification requirements.

(*2*) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access monkfish permit within 12 months of the effective date of these regulations by submitting evidence that the vessel meets the requirements described in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section.

(N) *Appeal of denial of permit.* (*1*) Any applicant denied a limited access monkfish 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 erred in concluding that the vessel did not meet the criteria in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Administrator's decision 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. The hearing officer shall make a recommendation to the Regional Administrator. The Regional Administrator's decision on the appeal is the final decision of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* (*i*) A vessel denied a limited access monkfish permit may fish under the monkfish DAS program, 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 monkfish DAS program. The Regional Administrator will issue such a letter for the pendency of any appeal, which decision is the final administrative action of the Department of Commerce pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in §648.92(b)(1) and must report the use of monkfish DAS according to the provisions of §648.10(b) or (c), whichever applies. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of

the notice of denial. If the appeal is finally approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(*ii*) *Monkfish incidental catch permits effective November 8, 1999.* A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit is eligible for and may be issued a monkfish incidental catch permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

(ii) [Reserved]

(10) [Reserved]

(11) *Spiny dogfish vessels.* Any vessel of the United States that commercially fishes for, possesses, or lands spiny dogfish in or from the EEZ must have been issued and carry on board a valid commercial spiny dogfish vessel permit.

(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 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, 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, black sea bass moratorium or bluefish commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, 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, black sea bass, spiny dogfish, or bluefish, 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 reissued 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) 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: For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in §648.82(k). A vessel owner electing a Day gillnet designation must indicate the number of gillnet tags that he/she is requesting and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel informing him/her 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.

(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 rceipt 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.

(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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §648.4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§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, monkfish, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, spiny dogfish, or bluefish, 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's permit issued pursuant to part 697 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; 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 notification, 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; 64 FR 57593, Oct. 26, 1999; 64 FR 66587, Nov. 29, 1999; 65 FR 45851, July 26, 2000]

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, spiny dogfish, or bluefish 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.

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

(c) *Information requirements.* Applications must contain at least the following information, as applicable, 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, name of at-sea processor vessel, and current vessel documentation papers.

(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 applicant 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; 64 FR 57593, Oct. 26, 1999; 65 FR 45851, July 26, 2000]

§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) All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit, 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, which ever 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; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. 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) All dealers issued a dealer permit under this part, with the exception of those processing only surf clams or ocean quahogs, 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 or operators.*—(1) *Fishing Vessel Trip Reports*—(i) The

owner or operator of any vessel issued a permit under this part 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, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surf clam or ocean quahog permit, 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 charter or party 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 by species (or count, if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator's 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.

(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 postmarked 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 postmarked, 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 mackerel, or squid, or butterfish, or scup, or 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), (a)(2), or (a)(3) of this section, as applicable, 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; 64 FR 57593, Oct. 26, 1999; 65 FR 1569, Jan. 11, 2000; 65 FR 45851, July 26, 2000]

§ 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 transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies or monkfish 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; 64 FR 54745, Oct. 7, 1999]

§ 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′
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′

VMS DEMARCATION LINE—Continued

Description	N. Lat.	W. Long.
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*. (1) A scallop vessel issued a full-time or part-time limited access scallop permit, or issued an occasional limited access permit when fishing under the Georges' Bank Sea Scallop Exemption Program specified under §648.58, or a scallop vessel fishing under the small dredge program specified in §648.51(e), or a vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit whose owner elects to provide the notifications required by this paragraph (b) using the VMS specified in paragraph (b) of this section, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, 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). The owner of such a vessel must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed 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 vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel that have crossed the VMS Demarcation Line specified under paragraph (a) of this section is 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, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port.

(ii) A part-time scallop vessel may not fish in the DAS allocation program unless it declares into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(iii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iv) DAS for a vessel that is under the VMS notification requirements of this paragraph (b) begin with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. DAS end with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port.

(v) 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)(i), (ii), and (iii) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in paragraph (b) of this section.

(2)(i) A vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit must use the call-in notification system specified in paragraph (c) of this section, unless the owner of such vessel has elected under paragraph (b)(2)(iii) of this section to provide the notifications required by paragraph (b) of this section.

(ii) Upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the FEDERAL REGISTER, or other appropriate means, that a multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(1)(i) through (b)(1)(v) of this section.

(iii) A vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit may be authorized by the Regional Administrator to provide the notifications required by paragraph (b) of this section using the VMS specified in paragraph (b) of this section. The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an individual or combination vessel limited access multispecies permit that the vessel has 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). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(1)(i) through (b)(1)(v) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

(c) *Call-in notification*. Owners of vessels issued limited access multispecies or monkfish permits who are participating in a DAS program and who are not required to provide notification using a VMS, 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)(M)(*3*) and (a)(9)(i)(N)(*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 or monkfish 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 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§648.17 and 648.89, and any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in §648.94(c), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

(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, instead of use of the VMS. 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. A multispecies vessel issued an Individual DAS or Combination Vessel (regarding the multispecies fishery) permit are authorized to use the call-in system of notification specified in paragraph (c) of this section, unless otherwise notified as specified in paragraph (b)(2) 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. 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; 64 FR 54745, Oct. 7, 1999; 64 FR 55825, Oct. 15, 1999; 65 FR 21664, Apr. 24, 2000]

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, or NE multispecies, or monkfish, or Atlantic mackerel, squid, butterfish, or scup, or black sea bass, or bluefish, or spiny dogfish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. If required 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 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 a scup moratorium permit,

or a black sea bass moratorium permit, or a bluefish permit, or a spiny dogfish 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 bluefish, or spiny dogfish, 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 bluefish, or spiny dogfish, 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; 65 FR 1569, Jan. 11, 2000; 65 FR 45852, July 26, 2000]

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (bluefish), K (spiny dogfish), 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 butterfish, the summer flounder, the scup, the black sea bass, the spiny dogfish, and the bluefish 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; 65 FR 45852, July 26, 2000]

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterfish 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 butterfish from one vessel to another vessel.

(b)(1) Except as provided in paragraph (b)(2) of this section, 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 Federal 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.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer only up to 500 lb (226.8 kg) of combined small-mesh multispecies per trip for use as bait from one vessel to another, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

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

(iii) The receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.

(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.

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

[61 FR 34968, July 3, 1996, as amended at 62 FR 28642, May 27, 1997; 62 FR 63875, Dec. 3, 1997; 65 FR 16774, Mar. 29, 2000]

§ 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 with mesh size 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), (a)(14), (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 that 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.

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of Closed Area I specified in § 648.58, or § 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 by § 648.58, during the time and in the portion of the Nantucket Lightship Closed Area specified in § 648.58, or § 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 possesses on board a valid authorizing letter issued to the vessel under § 648.80(a)(4)(i) and the vessel complies with the requirements specified in § 648.80(a)(4).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(3), the small-mesh northern shrimp fishery exemption area; (a)(4), the Cultivator Shoal 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; (a)(14), the Raised Footrope Trawl Exempted Whiting Fishery; (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 provision of the 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 possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(h) and 648.94.

(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), and (o)(1) if effective 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)(ii) 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 § 648.23(b), 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 pursuant 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) [Reserved]

(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 solely for transport, any multispecies or monkfish, 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).

(117) Fish for, land, or possess NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(118) Possess brush-sweep trawl gear while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(119) Purchase or otherwise receive, except for transport, spiny dogfish from any person on board a vessel issued a spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(120) Purchase or otherwise receive for a commercial purpose spiny dogfish landed by a federally permitted vessel in any state, from Maine to Florida, after the effective date of notification published in the FEDERAL REGISTER stating that the semi-annual quota has been harvested and the EEZ is closed to the harvest of spiny dogfish.

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

(122) Fish for, possess or land *Loligo* squid, silver hake, black sea bass or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(a) while in possession of midwater trawl or other trawl 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 § 648.122 and § 648.123(a), unless

the nets or netting are stowed in accordance with § 648.23(b).

(123) Fish for, possess or land *Loligo* squid, silver hake, black sea bass, or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(b), while in possession of midwater trawl or other trawl 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 § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(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 owner or operator of a vessel holding a valid multispecies permit, or any person issued an operator's permit or issued a letter under § 648.4(a)(1)(i)(M)(*3*), to do any of the following:

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), and (e), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(2) If the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(g)(2)(iii) when fishing in the areas described in § 648.81(g)(1) through (i)(1), and (o)(1) if it becomes effective, during the time periods specified in those sections.

(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 owner or operator of a vessel issued a valid limited access multispecies permit or a letter under § 648.4(a)(1)(i)(M)(*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 NE multispecies specified in § 648.86(d) 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) For purposes of DAS notification, if required or electing to have a VMS unit under § 648.10:

(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), (c), (d), and (e) 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 that the allowable limit of cod specified in § 648.86(b)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4). Under no circumstances may such trip exceed 14 days in length.

(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).

(27) Possess or land per trip more than the possession or landing limit specified under § 648.86(c).

(28) Participate in the DAS program pursuant to § 648.82 when carrying passengers for hire on board the vessel during any portion of a fishing trip.

(29) Enter, be on a fishing vessel in, or fail to remove gear from, the areas described in § 648.81(g)(1) through (i)(1), and paragraph (o)(1) if it becomes effective, during the time periods specified, except as provided in § 648.81(d), (g)(2), (h)(2) and (i)(2).

(30) Enter, be on a fishing vessel in, or fail to remove gear from, the areas described in § 648.81(n) during the time periods specified, except as provided in § 648.81(d) and (n)(2).

(31) If the vessel has been issued a Charter/Party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(g)(2)(iii) when fishing in the areas described in § 648.81(g)(1) through (i)(1), and (o)(1) if it becomes effective, during the time periods specified in those sections.

(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 NE multispecies specified in § 648.88(a), unless the vessel is a charter or party vessel fishing under the charter/party restrictions specified in § 648.89.

(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 NE multispecies specified in § 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, haddock, and Atlantic halibut 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 smaller 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 areas described in § 648.58(b)(1), (b)(2), or (b)(3) when fishing under the Sea Scallop Exemption Program specified in § 648.58, 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 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 chapter 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 commercial 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.

(10) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower of 3000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor permit pursuant to § 648.6(a)(2).

(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 owner or operator of a vessel issued a valid open access multispecies permit to possess or land any regulated species as defined in § 648.2, or to 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 found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8)(i) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) 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 solely for transport on land, Atlantic bluefish taken from a fishing vessel that were harvested in or from the EEZ unless issued, and in possession of, a valid Atlantic bluefish fishery dealer permit issued under § 648.6(a).

(3) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, Atlantic bluefish that were harvested in or from the EEZ, unless the vessel has been issued a valid bluefish permit under § 648.4(a)(8)(i).

(4) Land Atlantic bluefish for sale in a state after the effective date of the notification in the FEDERAL REGISTER , pursuant to § 648.161(b), which notifies permit holders that the commercial quota is no longer available in that state.

(5) 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 an Atlantic bluefish permit issued under § 648.4(a)(8).

(6) Land Atlantic bluefish for sale after the effective date of the notification in the FEDERAL REGISTER pursuant to § 648.161(a), which notifies permit holders that the Atlantic bluefish fishery is closed.

(7) To purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in

the FEDERAL REGISTER stating that the commercial quota has been harvested.

(8) To purchase or otherwise receive for a commercial purpose bluefish harvested by a federally permitted vessel after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(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.

(iii) All small-mesh multispecies retained or possessed on a vessel issued any permit under §648.4 are deemed to have been harvested from the EEZ.

(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.

(8) *Monkfish*. All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

(9) All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8)(ii) are deemed to have been harvested from the EEZ.

(y) 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 monkfish permit to do any of the following:

(1) Fish for, possess, retain or land monkfish, unless:

(i) The monkfish are being fished for or were harvested in or from the EEZ by a vessel issued a valid monkfish permit under this part and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

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

(iii) The monkfish were harvested in or from the EEZ by a vessel engaged in recreational fishing.

(2) Land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.

(3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish, unless the vessel has been issued a monkfish permit, or unless the monkfish were harvested by a vessel with no monkfish permit that fishes for monkfish exclusively in state waters.

(4) Fish for, possess, retain, or land monkfish, or operate or act as an operator of a vessel fishing for or possessing monkfish in or from the EEZ without having been issued and possessing a valid operator permit.

(5) Fish with, use, or have on board, while fishing under a monkfish DAS within the Northern Fishery Management Area or Southern Fishery Management Area as described in § 648.91(a) and (b), nets with mesh size smaller than the minimum mesh size specified in § 648.91(c).

(6) Violate any provision of the incidental catch permit restrictions as provided in §§ 648.4(a)(9)(ii) and 648.94(c).

(7) Possess, land, or fish for monkfish while in possession of dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, except for vessels with no monkfish permit that fish for monkfish exclusively in state waters.

(8) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession or trip limits specified in § 648.94 as is applicable to a vessel issued a monkfish limited access or incidental catch permit.

(9) Fail to comply with the monkfish size limit restrictions of § 648.93.

(10) Fail to comply with the monkfish liver landing restrictions of § 648.94(d).

(11) Fish for, possess or land monkfish as specified in § 648.94 or when not participating in the monkfish DAS program pursuant to § 648.92.

(12) If carrying a VMS unit under § 648.10:

(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.

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

(14) Fish for, possess, or land monkfish 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)(9)(i)(E) and (F).

(15) Fish for, possess, or land monkfish with or from a vessel 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)(9)(i)(E) and (F).

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

(17) If the vessel has been issued a limited access monkfish permit and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(18) If the vessel is fishing under the gillnet category, fail to comply with the applicable restrictions and requirements specified in § 648.92(b)(8).

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

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

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

(z) *Small-mesh multispecies.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, and subject to paragraph (a)(32) of this section, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, small-mesh multispecies from one vessel to another in excess of the limits specified in § 648.13.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2002, it is unlawful for an owner or operator of a vessel issued a valid Federal multispecies permit to do any of the following:

(i) Fish with, use or have available for immediate use within the areas described in §§ 648.80(a), (b), and (c), nets of mesh size smaller than 3–in (7.62–cm), unless otherwise exempted pursuant to § 648.80(a)(7).

(ii) If issued a Federal multispecies permit, land or possess on board a vessel, more than 10,000 lb (4,536 kg) of combined whiting and offshore hake.

(aa) 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 spiny dogfish permit or issued an operator's permit to do any of the following:

(1) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, spiny dogfish, unless the dealer or transferee has a dealer permit issued under § 648.6(a).

(2) Fish for or possess spiny dogfish harvested in or from the EEZ after the effective date of the notification published in the FEDERAL REGISTER stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(3) Land spiny dogfish for a commercial purpose after the effective date of the notification published in the FEDERAL REGISTER stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(4) Remove the fins from spiny dogfish and discard the carcass.

(5) Land spiny dogfish fins in excess of 5 percent, by weight, of the weight of spiny dogfish carcasses.

(6) Store spiny dogfish fins on board a vessel after the vessel lands spiny dogfish.

[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 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 2: At 65 FR 25891, May 4, 2000, § 648.14 was amended by adding paragraph (aa)(7), effective May 1, 2000 through Oct. 28, 2000. For the convenience of the user, the added text follows:

§ 648.14 Prohibitions.

* * * * *

(aa) * * *

(7) Land per trip more than the trip limit of spiny dogfish specified under § 648.235.

§ 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 offload 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 recision 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 § 648.23(b); 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, as amended at 65 FR 37911, June 19, 2000]

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*—catch associated with a fishing mortality rate of F_{MSY}.

(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; 64 FR 57593, Oct. 26, 1999]

§ 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 = T - C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} (F = 0.25) at 890,000 mt spawning stock biomass (or greater) and decreases linearly to zero at 450,000 mt spawning stock biomass (½ B_{MSY}).

(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, projected 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 bycatch 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 butterfish 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 public comment period.

(f) *Distribution of annual commercial quota.* (1) Beginning January 1, 2000, a commercial quota will be allocated annually into three periods, based on the following percentages:

Period	Percent
I—January–April	42
II—May–August	18
III—September–December	40

(2) Beginning January 1, 2000, any underages of commercial period quota for Periods I and II will be applied to Period III after November 15 of the same year and any overages of commercial quota for Periods I and II will be subtracted from Period III after November 15 of the same year.

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997; 64 FR 57593, Oct. 26, 1999; 65 FR 16345, Mar. 28, 2000; 65 FR 55927, Sept. 15, 2000]

§ 648.22 Closure of the fishery.

(a) *General.* NMFS 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, NMFS shall close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. NMFS shall close the directed fishery in the EEZ for *Loligo* when 90 percent is harvested in Periods I and II, and when 95 percent of DAH has been harvested in Period III. The closure of the directed fishery shall be in effect for the remainder of the fishing period with incidental catches allowed as specified in paragraph (c) of this section. NMFS shall close the directed fishery in the EEZ for *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; 65 FR 16345, Mar. 28, 2000]

§ 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 1⅞ 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 1⅞ 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.'' Gear that is 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) *Nets.* (i) *Below deck stowage.* (A) It is stored below the main working deck from which it is deployed and retrieved;

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

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

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

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

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

(iii) *On-reel stowage.* (A) It is on a reel, its entire surface is covered with canvas or other similar material, and the canvas or other material is securely bound;

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

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

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area.* (A) The net is on a reel, its entire surface is covered with canvas or other similar material, and the canvas or other material is securely bound;

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

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

(2) *Scallop dredges.* The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is 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.

(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 mesh construction, mesh configuration or other means 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 aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

(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 1⅞ 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 1⅞ 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; 65 FR 16345, Mar. 28, 2000; 65 FR 37911, June 19, 2000]

§ 648.24 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, 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 Council recommends that the management measures should be issued as a final

rule, the Council 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 the regulations would 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 recommended management measures.

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

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

(3) *NMFS action*. If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council'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 (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council's recommended management measures 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 Council recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

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

(4) *Emergency actions*. 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.

(b) [Reserved]

[64 FR 57593, Oct. 26, 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 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 (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) For 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) 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; 65 FR 37911, June 19, 2000]

§ 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 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; 65 FR 37911, June 19, 2000]

§ 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:

DAS category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008+
Full-time	120	120	49	46	45	34	35	38	36	60
Part-time	48	48	19	18	18	14	14	15	17	24
Occasional	10	10	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.* 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 February 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.

(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; 65 FR 11480, Mar. 3, 2000; 65 FR 37911, June 19, 2000]

§ 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 include 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 mi^2 (5000.4 km^2), 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 1: At 64 FR 14840, Mar. 29, 1999, § 648.57 was added, effective Mar. 27, 1999, through Mar. 1, 2001.

EFFECTIVE DATE NOTE 2: At 65 FR 37911, June 19, 2000, § 648.57 was amended by revising introductory paragraphs (a) and (b), effective June 15, 2000, through Mar. 1, 2001. For the convenience of the user, the revised text follows:

§ 648.57 Closed areas.

(a) *Hudson Canyon South Closed Area.* Through March 1, 2001, no vessel may fish for, possess, or retain sea scallops from the area known as the Hudson Canyon South Closed Area or possess sea scallops in this closed area or transit this closed area unless all scallop dredge gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b). Vessels fishing in this closed area for species other than scallops must stow scallop dredge gear in accordance with the provisions of § 648.23(b). The Hudson Canyon South Closed Area (copies of a chart depicting

this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated: * * *

(b) *Virginia Beach Closed Area*. Through March 1, 2001, no vessel may fish for, possess, or retain sea scallops from the area known as the Virginia Beach Closed Area or possess sea scallops in this closed area or transit this closed area unless all scallop dredge gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b). Vessels fishing in this closed area for species other than scallops must stow scallop dredge gear in accordance with the provisions of § 648.23(b). The Virginia Beach Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated: * * *

§ 648.58 Sea Scallop Exemption Program.

(a) *Eligibility*. All scallop vessels issued a limited access scallop permit may fish in the Sea Scallop Exemption Areas, as described in paragraphs (b)(1) through (b)(3) of this section, for the times specified in paragraphs (b)(1) through (b)(3) of this section, when fishing under a scallop DAS, provided the vessel complies with the requirements of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(b) *Sea Scallop Exemption Areas*—(1) *Closed Area II Sea Scallop Exemption Area*. During June 15, 2000, through August 14, 2000, eligible vessels may fish in the Closed Area II Sea Scallop Exemption Area, which is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
CII1	41°00'	67°20'
CII2	41°00'	66°35.8'
G5	41°18.6'	66°24.8'(on U.S./Canada Maritime Boundary)
SC1	41°30'	66°34.8'(on U.S./Canada Maritime Boundary)
SC2	41°30'	67°20'
CII1	41°00'	67°20'

(2) *The Nantucket Lightship Sea Scallop Exemption Area*. During August 15, 2000, through September 30, 2000, eligible vessels may fish in the Nantucket Lightship Sea Scallop Exemption Area, which is the area defined by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
G10	40°50'	69°00'
SC7	40°30'	69°00'
SC8	40°30'	69°14.5'
SC9	40°50'	69°29'
G10	40°50'	69°00'

(3) *The Closed Area I Sea Scallop Exemption Area*. During October 1, 2000, through December 31, 2000, eligible vessels may fish in the Closed Area I Sea Scallop Exemption Area, which is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
SC3	41°04.5'	69°1.2'

CLOSED AREA I SEA SCALLOP EXEMPTION AREA—Continued

Point	N. Lat.	W. Long.
SC4	41°09'	68°30'
CI4	41°30'	68°30'
SC5	41°30'	68°35'
SC6	41°08'	69°4.2'
SC3	41°04.5'	69°1.2'

(c) *Requirements.* To fish in the Sea Scallop Exemption Areas under the Sea Scallop Exemption Program an eligible vessel must comply with the following requirements:

(1) *Season.* The vessel may only fish in the Sea Scallop Exemption Areas under the Sea Scallop Exemption Program during the respective times and areas specified in paragraphs (b)(1) through (b)(3) of this section, 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 report through the VMS e-mail messaging system at least 15 days prior to the opening of each Sea Scallop Exemption Area season, as specified in paragraphs (b)(1) through (b)(3) of this section, of its intention to fish in the respective Exemption Areas, 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 Sea Scallop Exemption Area in question.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS, 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 Sea Scallop Exemption Program.

(iii) On the day the vessel leaves port to fish under the 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.

(4) *Number of trips.* (i) *Full and part time vessels.* Unless otherwise specified by notification in the FEDERAL REGISTER, full and part time vessels will be restricted to the following number of trips depending on the Exemption Area fished:

(A) When fishing in the Closed Area II Sea Scallop Exemption Area, as defined in paragraph (b)(1) of this section, vessels are restricted to no more than three trips.

(B) When fishing in the Nantucket Lightship Sea Scallop Exemption Area, as defined in paragraph (b)(2) of this section, vessels are restricted to no more than one trip.

(C) When fishing in the Closed Area I Sea Scallop Exemption Area, as defined in paragraph (b)(3) of this section, vessels are restricted to no more than two trips.

(ii) *Occasional scallop vessels.* Occasional vessels may only fish one trip under the Sea Scallop Exemption Program. This trip may be conducted in any one of the Sea Scallop Exemption Areas during the respective seasons, as described in paragraphs (b)(1) through (b)(3) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Sea Scallop Exemption Program must not fish for, catch, or harvest scallops from outside of the specific Sea Scallop Exemption Area fished during that trip and must not enter or exit the specific Exemption Area fished 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 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 1,000 lb (453.6 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 1,000 lb (453.6 kg) are donated to a bonafide charity. A vessel subject to the 1,000-lb (453.6-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 Sea Scallop Exemption Areas, all gear on board must be properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b).

(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 Sea Scallop Exemption Program. The reports must be submitted in 24–hour intervals no later than 0900 hours of the preceding day, beginning at 0000 hours and ending at 2400 hours each day, and include the following information:

(i) Total pounds/kilograms of scallop meats kept; the Fishing Vessel Trip Report log page number; and

(ii) For each trip that the vessel has a NMFS approved observer on board, the total pounds/kilograms of scallop meats kept, Fishing Vessel Trip Report log page number 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 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) *Adjustments to possession limits and number of trips*—(1) *Adjustment process for sea scallop possession limit and number of trips for Closed Area I and the Nantucket Lightship Closed Area.* If the scallop and yellowtail flounder catch in the Nantucket Lightship and/or the Closed Area I Sea Scallop Exemption Areas is less than the scallop TAC and yellowtail flounder TAC specified under paragraphs (f)(1) and (f)(2) of this section, 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 for the Nantucket Lightship and/or the Closed Area I Sea Scallop Exemption Areas during the month of January 2001. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the possession limit and/or trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Occasional permitted vessels would not be allocated an additional trip.

(2) *Increase of possession limit to defray costs of observers*—(i) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified under paragraph (c)(6) of this section for a vessel, subject to the limit on the cumulative amount of sea scallops allocated to defray costs of observers by areas as specified in paragraph (e)(2)(ii)(A) of this section, that has declared a fishing trip into the Sea Scallop Exemption Program if a NMFS approved observer is on board the vessel. Notification of this increase of the possession limit will be provided to the vessel through a Letter of Authorization issued by the Regional Administrator. 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, regardless of whether the vessel lands or sells sea scallops on that trip.

(ii) *Observer set-aside limits on increases of possession limits by area.* (A) The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified under paragraph (c)(6) of this section to defray the cost of an observer shall not exceed the following for each sea scallop exemption area:

(*1*) Closed area II—60 mt

(*2*) Nantucket Lightship—50 mt

(*3*) Closed area I—64 mt.

(B) [Reserved]

(iii) *Notification of observer set aside limit.* NMFS shall publish notification in the FEDERAL REGISTER of the date that the Regional Administrator projects that the observer set aside limit will be caught.

(3) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(i) *Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section or allow additional trips into a Sea Scallop Exemption Area, subject to the limits on the cumulative amount of sea scallops and yellowtail flounder allocated to defray costs for sea scallop research as specified in paragraph (e)(3)(ii) of this section.

(ii) *Sea scallop research set-aside limits on adjustments to possession limits and number of trips by area.* (A) Sea scallop set aside for sea scallop research. The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified under (c)(6) for purposes of defraying the cost of sea scallop research shall not exceed the following for each sea scallop exemption area:

(*1*) Closed area II—30 mt

(*2*) Nantucket Lightship—25 mt

(*3*) Closed area I—32 mt.

(B) Yellowtail flounder research set aside. The cumulative amount of yellowtail flounder catch authorized under this part to be taken by vessels in excess of the possession limits specified in (c)(6) for purposes of defraying the cost of sea scallop research shall not exceed the following for each sea scallop exemption area:

(*1*) Closed areas I and II—7.25 mt

(*2*) Nantucket Lightship—0.5 mt.

(C) NMFS shall publish notification in the FEDERAL REGISTER of the date that the Regional Administrator projects that these set aside limits will be caught.

(iii) *Adjustment procedure.* (A) Determinations as to which vessel may be authorized to take more than the trip limits specified at (e)(3)(i) of this section or to take additional trips for the purposes of defraying sea scallop research costs shall be made by NMFS, in cooperation with the Council. At a minimum applicants shall submit a scallop proposal under this program and a project summary that includes: the project goals and objectives, relationship of sea scallop research to management needs or priorities identified by the Council, project design, participants other than applicant, funding needs, breakdown of costs, and vessel(s) identified to be authorized as specified under paragraph (e)(3)(iii)(B) of this section.

(B) NOAA will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits or additional trips. Authorization to increase possession limits and/or number of trips will be provided to the vessel by Letter of Authorization issued by the Regional Administrator.

(iv) *Project Report Procedure.* Upon completion of its sea scallop research, the researcher of approved projects must provide the Council with a report of its findings, which includes:

(A) A detailed description of methods of data collection and analyses;

(B) A discussion of results and any relevant conclusions presented in a format that is understandable to a nontechnical audience; and

(C) A detailed final accounting of all funds used to conduct the sea scallop research.

(f) *Termination of the Sea Scallop Exemption Area Fisheries*—(1) *Termination of sea scallop exemption area fisheries when the scallop TAC is exceeded*—(i) *Closed Area II Sea Scallop Exemption Area.* NMFS shall terminate the Closed

Area II Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 2,934 mt of Closed Area II sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(ii) *Nantucket Lightship Sea Scallop Exemption Area.* NMFS shall terminate the Nantucket Lightship Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 2,445 mt of Nantucket Lightship sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(iii) *Closed Area I Sea Scallop Exemption Area.* NMFS shall terminate the Closed Area I Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 3,111 mt of Closed Area I sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(2) *Termination of sea scallop exemption area fisheries when the yellowtail flounder TAC is exceeded*—(i) *Closed Area II and Closed Area I Sea Scallop Exemption Areas.* NMFS shall terminate the Closed Area II and Closed Area I Sea Scallop Exemption Area fisheries as of the date the Regional Administrator projects that the 717.75 mt of Georges Bank yellowtail flounder will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(ii) *Nantucket Lightship Sea Scallop Exemption Area.* NMFS shall terminate the Nantucket Lightship Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that the 49.5 mt of Southern New England yellowtail flounder will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the FEDERAL REGISTER.

(g) *Transiting.* (1) *Closed Area II.* Limited access sea scallop vessels may not enter, fish, or be in the area known as the Closed Area II Sea Scallop Exemption Area described in paragraph (b)(1) of this section unless the operator has determined that there is a compelling safety reason and the vessel's fishing gear is stowed in accordance with the requirements of § 648.23(b).

(2) *The Nantucket Lightship Closed Area and Closed Area I.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Exemption Program may not enter, fish, or be in the areas known as the Nantucket Lightship and Closed Area I Sea Scallop Exemption Areas described in paragraphs (b)(2) and (b)(3), respectively, of this section, unless the vessel's fishing gear is stowed in accordance with the requirements of § 648.23(b).

(h) *VMS Polling.* For the duration of the Sea Scallop Exemption Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Exemption Program.

[65 FR 37912, June 19, 2000]

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.

(4) *Georges Bank.* The paralytic shellfish poisoning (PSP) contaminated area, which is located in Georges Bank, and is located east of 69° W. longitude, and south of 42°20' N. latitude.

(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; 64 FR 57594, Oct. 26, 1999]

§ 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 ft^3 (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]

§ 648.77 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Surf Clam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity

to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels) description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set aside quota for scientific research, vessel tracking system, optimum yield range.

(2) *Council recommendation*. After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, 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 Council recommends that the management measures should be issued as a final rule, it 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 the regulations would 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 recommended management measures.

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

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

(3) *NMFS action*. If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council'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 (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council's recommended management measures 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 Council recommendation, the measures will be issued as a final rule and published in the FEDERAL REGISTER.

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

(4) *Emergency actions*. 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.

(b) [Reserved]

[64 FR 57594, Oct. 26, 1999]

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

§ 648.80 Multispecies 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′

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA—Continued

Point	N. Lat.	W. Long.
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1] The 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 loran 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′	

[1] Northward 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 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 ft^2 (0.81 m^2)), 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 (a)(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, if fishing under a scallop DAS in accordance with paragraph (h), 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 § 648.23(b).

(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:

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)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Through April 30, 2002, an owner or operator of 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 incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake 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) Beginning May 1, 2002, an owner or operator of a vessel fishing for northern shrimp 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 incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.36 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(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 a 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′
CI4	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 valid letter of authorization issued by the Regional Administrator on board.

(B) Through April 30, 2002, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2002, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

(D) Counting from the terminus of the net, all nets must have a minimum mesh size of 3 in (7.62 cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the FEDERAL REGISTER.

(F) 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 specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in paragraph (a) of this section during the course of the trip.

(G) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section for the entire trip.

(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), (a)(14), (b), and (c) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (a)(14)(i), (b)(3), and (c)(3) of this section.

(7) *Addition or deletion of exemptions*--(i)(A) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient 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 various factors including, 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 are made through issuance of a rule in the FEDERAL REGISTER.

(B) *Small-mesh multispecies.* Beginning May 1, 2002, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 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 various factors including, 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 small-mesh multispecies. 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 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications are 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 or small-mesh multispecies.

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i)(A) Unless otherwise prohibited in § 648.81, through April 30, 2002, a vessel 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 paragraphs (a)(3)(ii) or (a)(8)(ii) of this section, and, 648.86(d), 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. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; 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 or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2002, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; 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 or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Small-mesh areas 1 and 2 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 ½-inch (1.2 cm) for the top leg, not larger than ⅝-inch (1.6 cm) for the bottom leg, and not larger than ¾-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 longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of 3/8 inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, 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 drop 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, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inch (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (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 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 intervals of 8 ft (2.4 m) 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 ft (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′
Cl1	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 exemption 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 transitting 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)(*1*) Through April 30, 2002, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.72 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2002, all nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. Vessels may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(*1*) of this section.

(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 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.

(14) *Raised Footrope Trawl Exempted Whiting Fishery.* 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 Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The Raised Footrope Trawl Whiting Fishery 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:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
RF 1	42°01.9′	70°14.7′
RF 2	41°59.45′	70°23.65′
RF 3	42°07.85′	70°30.1′
RF 4	42°15.05′	70°08.8′
RF 5	42°08.35′	70°04.05′
RF 6	42°04.75′	70°16.95′
RF 1	42°01.9′	70°14.7′

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) Up to and including April 30, 2002, all nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(C) Beginning May 1, 2002, in addition to the requirements specified in paragraph (a)(14)(i)(B) of this section, all nets must comply with a minimum mesh size of 3-inch (7.62-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. An owner or operator of any vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(14)(i)(B) and (C) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(8)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area and would be restricted to a minimum mesh size of 3 inches (7.62 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area, the use of the raised footrope trawl, and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for red hake, which is restricted to 10 percent of the total catch under the Cultivator Shoal Whiting Fishery.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(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′

SOUTHERN NEW ENGLAND REGULATED MESH AREA—Continued

Point	N. Lat.	W. Long.
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′
G12	.....	[1] 70°00′

[1] Northward 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 ft^2 (0.81 m^2)), 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 (9), (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 a scallop state waters exemption specified in § 648.54, if fishing under a scallop DAS in accordance with paragraph (h), 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 § 648.23(b).

(3) *Exemptions*—(i) *Species exemptions.* (A) Through April 30, 2002, owners and operators of 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, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore 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 requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2002, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake—up to 10,000 lb (4,536 kg), 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 requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. Nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the

terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

(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; sea robins; 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 or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; 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 § 648.23(b).

(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 § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Adminstrator 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 ft^2 (0.81 m^2)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Small mesh beginning May 1, 2002.* Beginning May 1, 2002, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

(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) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

(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.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions 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 in (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) is not 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, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, 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 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.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies.* (i) *Nets of mesh size less than 2.5 inches (6.35 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5 inches (6.35–cm), as measured by methods specified in § 648.80(f), may use net strengtheners (covers as described at § 648.23(d)) provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.35 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets with mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm) (as measured by methods specified in § 648.80(f), and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (i.e., outside net) provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.24 cm), diamond or square mesh, as measured by methods specified in § 648.80(f). The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (i.e., both square or both diamond mesh) as the outside net.

(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 restriction specified in § 648.80 and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. 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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.80, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 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 chart 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, or unless exempt under the Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area I described in § 648.58(b)(3):

CLOSED AREA I

Point	N. Lat.	W. Long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
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 chart 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 Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area II described in § 648.58(b)(1):

CLOSED AREA II

Point	N. Lat.	W. Long.
CII1	41°00′	67°20′
CII2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ (the U.S.-Canada Maritime Boundary)
CII3	42°22′	67°20′ (the U.S.-Canada Maritime Boundary)
CII1	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 chart 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, or unless exempt under the Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of the Nantucket Lightship Closed Area described in § 648.58(b)(2):

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 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*. A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Cashes Ledge Closure Area, the Western GOM Closure Area, the

Georges Bank Seasonal Area Closure and the Conditional Cashes Ledge and Gulf of Maine Rolling Closure Areas (if applicable), as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), (i)(1), (n)(1) and (o)(1), respectively, of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(e)–(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 VI, as described in paragraphs (g)(l)(i) through (vi) of this section, for the times specified in paragraphs (g)(l)(i) through (vi) 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)

ROLLING CLOSURE AREA II—Continued

[April 1–April 30]

Point	N. lat.	W. long.
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.

(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.

(vi) *Rolling Closure Area VI.* From February 1 through February 28, or February 29 if applicable, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area VI, which is the area bounded by the straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA VI

[February 1 - February 28]

Point	N. Lat.	W. Long.(1)
GM1	42°00'	(2)
GM2	42°00'	(3)
GM3	42°00'	(4)
GM4	42°00'	70°00'
GM8	42°30'	70°00'
GM9	42°30'	(2)

[1] or other intersecting line:
[2] Massachusetts shoreline
[3] Cape Cod shoreline on Cape Cod Bay
[4] 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 fishing under charter/party or recreational regulations, provided that—

(A) For vessels fishing under charter/party regulations, it has on board a letter of authorization issued by the Regional Administrator, which is valid for a minimum enrollment period of 3 months;

(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;

(C) The vessel has no gear other than rod and reel or handline gear on board; and

(D) The vessel does not use any DAS during the entire period of enrollment.

(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.

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(14), and in the Gulf of Maine Rolling Closure Area V, as specified in paragraph (g)(1)(v) of this section.

(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, 2002, no fishing vessel or person on a 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 of this chapter), 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.
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.
to 181		
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.

Point	Latitude	Longitude
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.
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.
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.
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.
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.

(n) *Georges Bank Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a 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 the area known as the Georges Bank Seasonal Closure Area as defined as the straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (n)(2) of this section:

GEORGES BANK SEASONAL CLOSURE AREAS

[May 1 - May 31]

Point	N. Lat.	W. Long.
GB1	42°00'	(1)
GB2	42°00'	67°20'
GB3	41°30'	67°20'
GB4	41°30'	69°23'
GB5	(2)	69°00'
GB6	41°00'	69°00'
GB7	41°00'	70°00'
GB1	42°00'	(1)

[1] Cape Cod shoreline on Atlantic Ocean.
[2] Western boundary of Closed Area 1.

(2) Paragraph (n)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraph (g)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels; or

(iii) 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 uses an 8–inch (20.3–cm) twine top and complies with the multispecies possession restrictions for scallop vessels specified at § 648.80(h).

(o) *Conditional Cashes Ledge & Gulf of Maine Rolling Closure Areas.* (1) If the Regional Administrator determines that at least 50 percent of the average between the $F_{0.1}$ target TAC and the F_{max} target (an amount equal to 1.67 million lb (759 mt) for the 2000 - 2001 fishing year) has been landed as of, or before, July 31 of each year, NMFS, through a timely notification action in the FEDERAL REGISTER, shall implement the following closures:

(i) *Cashes Ledge Closure Area.* From November 1 through November 30, 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 described in § 648.81(h)(1), except as provided in § 648.81(h)(2); and

(ii) *Rolling Closure Area VI.* From January 1 through January 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 Rolling Closure Area VI, as described in § 648.81(g)(1)(vi), except as provided in § 648.81(g)(2).

[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; 65 FR 379, Jan. 5, 2000; 65 FR 21665, Apr. 24, 2000; 65 FR 37915, June 19, 2000; 65 FR 49946, Aug. 16, 2000]

§ 648.82 Effort-control program for multispecies limited access vessels.

(a) Except as provided in §§ 648.17 and 648.82(a)(2), 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) Notwithstanding any other provision of this part, any vessel issued a

multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip.

(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 allocation 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, and one Atlantic halibut per trip, without being subject to DAS restrictions. 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)(I)(*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)(I)(*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 § 648.23(b), 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; 65 FR 379, Jan. 5, 2000; 65 FR 21666, Apr. 24, 2000; 65 FR 37915, June 19, 2000]

§ 648.83 Multispecies 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, determined by total length (T.L.):

MINIMUM FISH SIZES (T.L.)

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)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 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 compliance 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; 64 FR 55827, Oct. 15, 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 or monkfish, 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 the 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.

[61 FR 34968, July 3, 1996, as amended at 64 FR 54747, Oct. 7, 1999]

§ 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 Multispecies possession restrictions.

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock*—(1) *NE multispecies DAS vessels.* (i) From May 1 through September 30, except as provided in paragraph (a)(1)(iii) of this section, a vessel that fishes under a NE multispecies DAS may land up to 3,000 lb (1,360.8 kg) of haddock per DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 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) From October 1 through April 30, except as provided in paragraph (a)(1)(iii) of this section, a vessel that fishes under a NE multispecies DAS may land up to 5,000 lb (2,268 kg) of haddock per DAS fished, or any part of a DAS fished, up to 50,000 lb (22,680 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.

(iii) Adjustments—(A) *Adjustment to haddock trip limit to prevent exceeding target TAC.* At any time during the fishing year, if the Regional Administrator projects that the target TAC for haddock (6,252 mt for 2000–2001 fishing year) will be exceeded, NMFS may adjust, through publication of a notification in the FEDERAL REGISTER, the trip limit per DAS and/or the maximum trip limit to an amount that the Regional Administrator determines will prevent exceeding the target TAC.

(B) *Adjustment of the haddock trip limit to allow harvesting up to 75 percent of target TAC.* At any time during the fishing year, if the Regional Administrator projects that less than 75 per cent of the target TAC for haddock (4,689 mt for 2000–2001 fishing year) will be harvested by the end of the fishing

year, NMFS may adjust, through publication of a notification in the FEDERAL REGISTER, the trip limit per DAS and/or the maximum trip limit to an amount that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC.

(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 Sea Scallop Exemption Program, from July 1 through December 31, 2000, as provided in § 648.58(c)(6)(ii), or unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, 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 paragraph (b)(1)(ii) and (b)(4) of this section, and subject to the call-in provision specified in Sec.648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land only up to 400 lb (181.8 kg) of cod during the first 24-hr 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 400 lb (181.8 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 hr, a vessel may land up to an additional 400 lb (181.8 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 800 lb (363.6 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr but less than 48 hr) may land up to an additional 400 lb (181.8 kg) of cod for that trip. 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 Sec.648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr 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 hr, at the time of landing, may land only up to 800 lb (363.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(B) [Reserved]

(2) *Georges Bank Cod Landing and Maximum Possession Limits.* For each fishing year, 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. 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.

(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 § 648.23(b) 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 § 648.23(b).

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

(d) *Small-mesh multispecies through April 30, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by or on board vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels using mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided herein, nets of mesh size smaller than 2.5 in (6.35 cm) (as applied to the part of the net specified at (d)(1)(iv) of this section), and, vessels that have not been issued a letter of authorization pursuant to paragraph (d)(1)(ii) or (d)(1)(iii) of this section may possess on board and land up to only 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 in (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii) and (d)(2) of this section. Silver hake and offshore hake 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. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 in (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 in (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 7,500 lb (3,402 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 in (6.35 cm)

(as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 in (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake 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. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 in (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 in (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 in (7.62 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 in (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake 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. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i),(ii) and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.28 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3) with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake 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.

(3) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Owners and operators of vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) *Small-mesh multispecies beginning on May 1, 2002*—(1) *Federal multispecies permit holders.* An owner or operator of a vessel issued a valid Federal multispecies permit specified under § 648.4 (a)(1) may possess on board or land up to 10,000 lb (4,536 kg) of combined silver hake and offshore hake. Silver hake and offshore hake 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. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(2) *Possession limit for vessels participating in the Northern shrimp fishery.* Owners or operators of vessels fishing in the Small-mesh Northern Shrimp Fishery Exemption Area under the exemption described in § 648.80(a)(3), with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1), may possess on board or land silver hake and offshore hake, combined, up to 100 lb (45.36 kg). Silver

hake and offshore hake 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.

(3) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.9 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(f) *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.

(g) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

[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; 64 FR 55827, Oct. 15, 1999; 65 FR 380, Jan. 5, 2000; 65 FR 16778, 16782, Mar. 29, 2000; 65 FR 21666, Apr. 24, 2000; 65 FR 30548, May 12, 2000; 65 FR 37915, June 19, 2000]

§ 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), through (a)(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 § 648.23(b), 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 § 648.23(b), 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 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′

MASSACHUSETTS BAY CLOSURE AREA—Continued

Point	N. latitude	W. longitude
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.

(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 § 648.23(b), 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 § 648.23(b), 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; 65 FR 37916, June 19, 2000]

§ 648.88 Multispecies 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, one Atlantic halibut, per trip, and unlimited amounts of the other NE multispecies, provided 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 additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop multispecies possession limit permit.* Except as provided in § 648.58(c)(6)(ii) for vessels fishing under the Sea Scallop Exemption 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 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) *Non-regulated multispecies permit.* A vessel issued a valid open access non-regulated multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other 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; 64 FR 55827, Oct. 15, 1999; 65 FR 380, Jan. 5, 2000; 65 FR 37917, June 19, 2000]

§ 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).

(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, may not retain fish smaller than the minimum fish sizes, measured in total length (T.L.) as follows:

Species	Size (Inches)
Cod	21 (53.3 cm)
Haddock	21 (53.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) *Exception.* 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.

(c) *Possession restrictions*—(1) *Cod and haddock.* Each person on a recreational vessel may possess no more than 10 cod and/or haddock, combined, in, or harvested from, the EEZ.

(i) 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.

(ii) 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 on board. 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.

(iii) Cod and haddock must be stored so as to be readily available for inspection.

(2) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(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.

(e) Charter/party vessel restrictions on fishing in Gulf of Maine closed areas and the Nantucket Lightship Closed Area.

(1) *Gulf of Maine Closed Areas.* A vessel fishing under charter/party regulations may not fish in the Gulf of Maine closed areas specified in § 648.81(g)(1) through (i)(1), and (o)(1) if it becomes effective, during the time periods specified in those sections, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to §§ 648.81(g)(2)(iii) and 648.89(e)(3). The letter of authorization is valid for a period of 3 months.

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to §§ 648.81(c)(2)(iii) and 648.89(e)(3).

(3) *Letters of Authorization.* To obtain either of the letters of authorization specified in § 648.89(e)(1) and (e)(2), a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to § 600.502 of this chapter). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) Fish harvested or possessed by the vessel may not be sold or intended for trade, barter or sale, regardless of where the fish are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the Gulf of Maine charter/party closed area exemption only, the vessel may not use any multispecies DAS during the period of participation.

[61 FR 34968, July 3, 1996, as amended at 64 FR 55827, Oct. 15, 1999; 65 FR 21666, Apr. 24, 2000; 65 FR 30549, May 12, 2000; 65 FR 37917, June 19, 2000]

§ 648.90 Multispecies 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 to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the NE Multispecies FMP goals and objectives. For the year 2000 and thereafter, the MSMC, and for the year 2001 and thereafter, the Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, if applicable, closed areas or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC and WMC, as applicable, shall separately review available data pertaining to: Catch and landings, discards, 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 WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The MSMC and WMC must demonstrate through analyses and documentation that the options they develop are expected to meet the NE Multispecies FMP goals and objectives. The MSMC and WMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC or WMC 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 or small-mesh multispecies; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of essential fish habitat (EFH); fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the NE Multispecies FMP. In addition, for the 2002 fishing year, the WMC must consider, and recommend as appropriate, management options other than the default measures for small-mesh multispecies management (mesh and possession limit restrictions for small-mesh multispecies beginning May 1, 2002).

(3) The NEFMC shall review the recommended target TACs recommended by the MSMC and all of the options developed by the MSMC and WMC, and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective pertaining to regulated species or small-mesh multispecies that is consistent with 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 or WMC, unless rejected by the NEFMC, as specified in paragraph (a)(6) of this section, provided the option meets the NE Multispecies FMP objectives 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 (if applicable), closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. The NEFMC shall include in its recommendation 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, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets which form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) 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 analyses 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, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Adjustment process for Whiting TACs and DAS.* The Council may develop recommendations for a Whiting DAS effort reduction program or a Whiting TAC through the framework process outlined in paragraph (c)(1) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(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) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

[61 FR 34968, July 3, 1996, as amended at 62 FR 1405, Jan. 10, 1997; 62 FR 14650, Mar. 27, 1997; 64 FR 54747, Oct. 7, 1999; 64 FR 55827, Oct. 15, 1999; 65 FR 16779, Mar. 29, 2000]

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, possessing or landing monkfish must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Northern Fishery Management Area (NFMA)— Area definition.* The NFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at the intersection of 70° W. longitude and the south-facing shoreline of Cape Cod, MA (point A), then southward along 70° W. longitude to 41° N. latitude, then eastward to the U.S.-Canada maritime boundary, then in a northerly direction along the U.S.-Canada maritime boundary until it intersects the Maine shoreline, and then following the coastline in a southerly direction until it intersects with point A.

(b) *Southern Fishery Management Area (SFMA)—Area definition.* The SFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at point A, then in a southerly direction to the NC-SC border, then due east to the 200–mile limit, then in a northerly direction along the 200–mile limit to the U.S.-Canada maritime boundary, then in a northwesterly direction along the U.S.-Canada maritime boundary to 41° N. latitude, and then westward to 70° W. longitude, and finally north to the shoreline at Cape Cod, MA (point A).

(c) *Gear restrictions*—(1) *Minimum mesh size*—(i) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including

beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4 cm) square or 12–inch (30.5 cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified by § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and multispecies DAS.* For vessels issued a Category C or D limited access monkfish permit and fishing with trawl gear under both a monkfish *and* multispecies DAS, the minimum mesh size is that allowed under regulations governing mesh size for the NE Multispecies FMP at § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i), depending upon and consistent with the multispecies regulated mesh area being fished.

(iii) *Gillnets while on a monkfish DAS.* The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10–inches (25.4 cm) diamond mesh.

(iv) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C or D limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

(2) *Other gear restrictions.* (i) A vessel may not fish with dredges or have dredges on board while fishing under a monkfish DAS.

(ii) All other non-conforming gear must be stowed as specified in § 648.23(b).

(iii) The mesh size restrictions in paragraph (c)(1) of this section do not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft^2 (0.81 m^2)).

[64 FR 54747, Oct. 7, 1999, as amended at 65 FR 37917, June 19, 2000]

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) *General.* A vessel issued a limited access monkfish permit may not fish for, possess, retain, or land monkfish, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, except as otherwise provided 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 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) [Reserved]

(b) *Monkfish DAS program—permit categories and allocations*—(1) *Limited access monkfish permit holders.* For fishing years 1999, 2000, and 2001, all limited access monkfish permit holders shall be allocated 40 monkfish DAS for each fishing year. Multispecies and scallop limited access permit holders who also qualify for a limited access monkfish permit shall be allocated up to 40 monkfish DAS for each fishing year, depending on whether they have sufficient multispecies and/or scallop DAS to use concurrently with their monkfish DAS, as required by paragraph (b)(2) of this section. For fishing years 2002 and thereafter, no monkfish DAS will be allocated to any limited access monkfish permit holder.

(2) *Category C and D limited access monkfish permit holders.* Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable.

(3) *Accrual of DAS.* Same as § 648.53(e).

(4) *Good Samaritan credit.* Same as § 648.53(f).

(5) *Spawning season restrictions.* Beginning January 1, 2000, a vessel issued a valid Category A or B limited access monkfish permit under § 648.4(a)(9)(i)(A)(*1*) or (a)(9)(i)(A)(*2*) must declare and be out of the monkfish DAS program, as described in paragraph (b) of this section, for a continuous 20-day period between April 1

and June 30 of each calendar year using the notification requirements specified in § 648.10. If a vessel owner has not declared and been out for a continuous 20-day period between April 1 and June 30 of each calendar year on or before June 11 of each year, the vessel is prohibited from fishing for possessing or landing any monkfish during the period June 11 through June 30, inclusive.

(6) *Declaring monkfish 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 monkfish DAS program and declaration of its continuous 20-day period out of the monkfish DAS program, using the notification requirements specified in § 648.10.

(7) *Adjustments in annual monkfish DAS allocations.* Adjustments in annual monkfish DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of § 648.96.

(8) *Gillnet restrictions*—(i) *Number and size of nets.* A vessel issued a monkfish limited access permit or fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. A vessel issued a multispecies limited access permit and a limited access monkfish permit, or fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82(k)(1)(i) and that the nets are tagged in accordance with the regulations, as specified in § 648.82. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning May 1, 2000, all gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS must have one monkfish 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. A vessel operator must account for all net tags upon request by an authorized officer.

(iii) *Lost tags.* A vessel owner or operator must report lost, destroyed, or missing tag numbers by letter or fax to the Regional Administrator within 24 hours after tags have been discovered lost, destroyed, or missing.

(iv) *Replacement tags.* A vessel owner or operator seeking replacement of lost, destroyed, or missing tags must request replacement tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before the tags will be re-issued.

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS will accrue 15 hours monkfish DAS for each trip greater than 3 hours but less than or equal to 15 hours. Such vessel will accrue actual monkfish DAS time at sea for trips less than or equal to 3 hours or greater than 15 hours. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided that the vessel complies with the requirements and conditions of paragraphs (b)(8)(i), (ii), (iii), (iv), and (v) of this section.

[64 FR 54748, Oct. 7, 1999]

§ 648.93 Monkfish minimum fish sizes.

(a) *Minimum fish sizes.* (1) All monkfish caught in or from the EEZ or by vessels issued a Federal monkfish permit must meet the following minimum fish size requirements (total length and tail length) unless such minimum fish sizes are adjusted pursuant to paragraph (b) of this section:

MINIMUM FISH SIZES
(Total Length/Tail Length)

Total Length	Tail Length
17 inches (43.2 cm)	11 inches (27.9 cm)

(2) The minimum fish size applies to the whole fish (total length) or to the tail of a fish (tail length) at the time of landing. Fish or parts of fish, with the exception of cheeks and livers, 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 fish parts possessed. Monkfish tails are measured from the anterior portion of the fourth cephalic dorsal spine to the end of the

caudal fin. Any tissue anterior to the fourth dorsal spine is ignored. If the fourth dorsal spine or the tail is not intact, the minimum size is measured between the most anterior vertebra and the most posterior portion of the tail.

(b) *Adjustments*—(1) *Vessels fishing in the SFMA.* (i) Unless the Regional Administrator makes the determination specified in paragraph (b)(1)(ii), beginning on May 1, 2000, the minimum fish size limit for vessels fishing in the SFMA, or for vessels not declared into the NFMA, is 21 inches (53.3 cm) total length/14 inches (35.6 cm) tail length.

(ii) If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA TAC, a notification will be published in the FEDERAL REGISTER specifying the minimum monkfish size limit of 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length for vessels fishing for, catching, or landing monkfish in the SFMA.

(2) *Vessels fishing in the NFMA.* An adjustment to the minimum size possession limits for vessels fishing for, catching, or landing fish in the SFMA under paragraph (b)(1) of this section will not affect the minimum size possession limits for vessels fishing for or landing monkfish in the NFMA, which will remain as described in paragraph (a)(1) of this section. If the size limits specified in paragraph (b)(1) of this section become effective for the SFMA, a vessel intending to fish for and catch monkfish under a monkfish DAS only in the NFMA must declare into that area for a period not less than 30 days when calling in under the DAS program or as otherwise directed by the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. Such restrictions shall apply to the entire trip. A vessel that has declared into the NFMA may transit the SFMA providing that it complies with the transiting and gear storage provisions described in § 648.94(e) and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

[64 FR 54749, Oct. 7, 1999]

§ 648.94 Monkfish possession and landing restrictions.

(a) *General.* Monkfish may be possessed or landed either as tails only, or in whole form, or any combination of the two. When both tails and whole fish are possessed or landed, the possession or landing limit for monkfish tails shall be the difference between the whole weight limit minus the landing of whole monkfish, divided by 3.32. A 996 lb (452 kg) whole weight trip limit and a 600 lb (272 kg) landing of whole fish shall, for example, allow for a maximum landing of tails of 119.3 lb (54.1 kg).

(b) *Vessels issued limited access monkfish permits*—(1) *Vessels fishing under the monkfish DAS program prior to May 1, 2000.* For vessels fishing under the monkfish DAS program prior to May 1, 2000, there is no monkfish trip limit.

(2) *Vessels fishing under the monkfish DAS program May 1, 2000, and thereafter.* (i) Unless the Regional Administrator makes the determination specified in paragraph (b)(2)(ii), the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section apply to vessels fishing under the monkfish DAS program in the SFMA.

(ii) If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA TAC, no monkfish trip limit shall apply to a vessel that is fishing under a monkfish DAS. Such determination shall be published in the FEDERAL REGISTER.

(iii) *Category A and C vessels using trawl gear.* Category A and C vessels exclusively using trawl gear during a monkfish DAS may land up to 1,500 lb (680 kg) tail-weight or 4,980 lb (2,259 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iv) *Category B and D vessels using trawl gear.* Category B and D vessels using exclusively trawl gear during a

monkfish DAS may land up to 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(v) *Vessels using gear other than trawl gear.* Any vessel issued a limited access monkfish permit and using gear other than trawl gear during a monkfish DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(vi) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(iii), (iv), and (v) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C and D vessels fishing during a multispecies DAS prior to May 1, 2002*—(i) *NFMA.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a multispecies DAS exclusively in the NFMA.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS, and not under a monkfish DAS, in the SFMA, the vessel may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

(4) *Category C and D vessels fishing during a multispecies DAS from May 1, 2002, and thereafter*—(i) *NFMA.* Any Category C or D vessel that is fishing under a multispecies DAS in the NFMA may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS and not under a monkfish DAS in the SFMA, a vessel issued a Category C or D permit may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less, if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(5) *Category C and D vessels fishing under the scallop DAS program prior to May 1, 2002.* A category C or D vessel fishing under a scallop DAS with a dredge on board, or under a net exemption provision as specified at § 648.51(f), may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(6) *Category C and D vessels fishing under the scallop DAS program from May 1, 2002, and thereafter.* A category C or D vessel fishing under a scallop DAS with a dredge on board may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(7) *Category C and D Scallop Vessels Declared into the Monkfish DAS Program without a Dredge on Board.* Category C and D vessels that have declared into the Monkfish DAS Program and that do not fish with or have on board a dredge are subject to the same possession limits as specified at (b)(1) and (b)(2). Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(c) *Vessels issued a monkfish incidental catch permit*—(1) *Vessels fishing under a multispecies DAS*—(i) *NFMA.* Vessels issued a monkfish incidental catch permit fishing under a multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 996 lb

(452 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) *SFMA.* If any portion of the trip is fished by a vessel issued a monkfish incidental catch permit under a multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(2) *Scallop dredge vessels fishing under a scallop DAS*—(i) P*rior to May 1, 2002.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) *From May 1, 2002, and thereafter.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(3) *Vessels not fishing under a monkfish, multispecies or scallop DAS*—(i) *Vessels fishing in the GOM/GB, SNE and MA Regulated Mesh Areas with large mesh.* A vessel issued a valid monkfish incidental catch permit and fishing in the GOM/GB or SNE RMAs with large mesh as defined in §648.80(a)(2)(i) and (b)(2)(i), respectively, or fishing in the MA RMA with mesh no smaller than specified at §648.104(a)(1), while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) [Reserved]

(4) *Vessels fishing with small mesh.* A vessel issued a valid monkfish incidental catch permit and fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip.

(5) *Small vessels.* A vessel issued a limited access multispecies permit and a valid monkfish incidental catch permit that is ≤ 30 feet (9.1 m) in length and that elects not to fish under the multispecies DAS program may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip, regardless of the weight of other fish on board.

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch permit and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip, regardless of the weight of other fish on board.

(d) *Monkfish liver landing restrictions.* (1) A vessel authorized to land monkfish under this part may possess or land monkfish livers up to 25 percent of the tail-weight of monkfish, or up to 10 percent of the whole weight of monkfish, per trip, except as provided under paragraph (d)(2) of this section.

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio:

(0.10) x [(tail weight x 3.32) + (whole fish x 1)]

NOTE TO PARAGRAPH (d)(2): The value 3.32 is the live weight conversion for tails and the value of 1 is the live weight conversion for fish landed in a whole condition.

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish, or a vessel that is subject to less restrictive measures in the NFMA, may transit the SFMA, provided that the vessel does not harvest or possess monkfish from the SFMA and that the vessel's fishing

gear is properly stowed and not available for immediate use in accordance with § 648.23(b).

(f) *Area declaration*. Should the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section be implemented under paragraph (b)(2) of this section, a vessel, in order to fish for monkfish under a monkfish DAS in the NFMA, must declare into that area for a period of not less than 30 days. A vessel that has not declared into the NFMA under this paragraph will be presumed to have fished in the SFMA under the more restrictive requirements of that area. Such restrictions will apply to the entire trip. A vessel that has declared its intent to fish in the NFMA may transit the SFMA, provided that it complies with the transiting provisions described in paragraph (e) of this section.

(g) *Other landing restrictions*. Vessels are subject to any other applicable landing restrictions of this part.

[64 FR 54749, Oct. 7, 1999, as amended at 65 FR 11480, Mar. 3, 2000; 65 FR 37917, June 19, 2000]

§ 648.95 [Reserved]

§ 648.96 Monkfish framework specifications.

(a) *Annual review*. The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, or other measures necessary to achieve the Monkfish FMP's goals and objectives.

(1) The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(2) Based on this review, the MFMC shall recommend target TACs and develop options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver to monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures included in §§ 648.55 and 648.90.

(3) The Councils shall review the recommended target TACs and all of the options developed by the MFMC and other relevant information, consider public comment, and develop a recommendation to meet the Monkfish FMP's objectives, consistent with other applicable law. The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MFMC. The oversight committee would review the options developed by the MFMC and any other relevant information, consider public comment, and make a recommendation to the Councils. If the Councils do not submit a recommendation that meets the Monkfish FMP's objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC unless rejected by either Council, provided such option meets the Monkfish FMP's objectives and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils.

(4) Based on this review, the Councils shall submit a recommendation to the Regional Administrator of any changes, adjustments, or additions to management measures necessary to achieve the Monkfish FMP's goals and objectives. The Councils' recommendation shall include supporting documents, as appropriate, concerning the

environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments or amendments for monkfish require majority approval of each Council for submission to the Secretary.

(5) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework meeting, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the FEDERAL REGISTER as a proposed rule. The FEDERAL REGISTER notification of the proposed action shall provide a 30-day public comment period. The Councils may instead submit their recommendation on or before February 1 if they choose to follow the framework process outlined in paragraph (c) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP's objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action shall be published as a final rule in the FEDERAL REGISTER. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP's objectives 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, fishing may continue. However, DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the FEDERAL REGISTER prior to each fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the Monkfish FMP's goals and objectives, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided that the option meets the Monkfish FMP's objectives and is consistent with other applicable law. If the Councils fail to submit a recommendation that meets the objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC, unless it was rejected by either the New England or Mid-Atlantic Council, provided the option meets the 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 shall be published as a final rule in the FEDERAL REGISTER.

(b) *Three-year review of biological objectives and reference points.* The MFMC shall meet on or before November 15, 2001, to evaluate threshold and target biological reference points. If adjustments are required, a framework action shall be initiated to replace the existing (''default'') measures scheduled to take effect on May 1, 2002 (Year 4). The framework process shall include a comprehensive evaluation, conducted by the MFMC during 2001, of the effectiveness of the management measures to reduce mortality below the overfishing threshold and allow rebuilding within (at that time) 6 years. If a change is required, the framework process shall follow the procedure described in paragraph (a) of this section, but may also include an adjustment of the overfishing definition.

(c) *Within season management action.* Either Council, or the joint Monkfish Oversight Committee (subject to the approval of the Councils chairmen), may at any time initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP. Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. Management adjustments or amendments for monkfish shall require majority approval of each Council for submission to the Secretary.

(1) *Adjustment process.* After a management action has been initiated, the Councils must develop and analyze appropriate management actions over the span of at least two Council meetings, one at each Council. The Councils 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 the first of the two final Council meetings. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver to monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures included in §§ 648.55 and 648.90.

(2) *Adjustment process for gear conflicts.* The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

(3) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' 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 Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four 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 Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

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

(4) *Action by NMFS.* If the Councils' recommendation to NMFS includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3) of this section, then the measures shall be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

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

[64 FR 54751, Oct. 7, 1999]

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 Regional 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]

EFFECTIVE DATE NOTE: At 65 FR 47649, Aug. 2, 2000, § 648.100 was amended by suspending paragraphs (a) through (e) and adding paragraphs (f) through (j), effective Aug. 2, 2000 through Jan. 29, 2001. For the convenience of the user, the added text follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(f) *Annual review for the 2001 measures.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15, 2000, to determine the biomass level that would have resulted in 2001 (B_{2001}), assuming the target fishing mortality rate (F) been achieved in 1999 and 2000 and would be achieved in 2001, provided that the resultant F does not exceed F_{max}. The Summer Flounder Monitoring Committee shall also review the following data to determine the allowable levels of fishing and other restrictions necessary in 2001 to accomplish, with at least a 50–percent probability of success, the specified B_{2001} by the end of 2001: 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.

(g) *Recommended measures for 2001.* Based on the review outlined in paragraph (f) of this section, 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 B_{2001} is achieved with at least a 50–percent probability of success:

(1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified B_{2001}.

(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 B_{2001}.

(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 (f) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(h) *Annual fishing measures for 2001.* 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, with at least a 50–percent probability of success, that B_{2001} will be achieved. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved. 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, with at least a 50–percent probability of success, that B_{2001} will be achieved. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved.

(i) *Distribution of the annual quota for 2001.* (1) The annual commercial quota for 2001 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. If landings in any state implementing a commercial quota for the year 2000 are less than that state's allocation, the amount of the unharvested quota (i.e., quota underage), will be added to that

state's 2001 allocation of commercial quota.

(j) *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-Stevens 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. If there is a quota underage among one or more of the states involved in the combination of quotas at the end of the 2000 fishing year, the underage will be added to the 2001 quota for each of the states involved in the combined quota. The addition 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 (i) of this section.

§ 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.

EFFECTIVE DATE NOTE: At 65 FR 47650, Aug. 2, 2000, § 648.101 was amended by suspending paragraph (a) and adding paragraph (c), effective Aug. 2, 2000 through Jan. 29, 2001. For the convenience of the user, the added text follows:

§ 648.101 Closures.

* * * * *

(c) *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 biomass target (B_{2001}) identified in § 648.100(f) not to be achieved 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 B_{2001} not to be achieved.

§ 648.102 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(3) 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 that 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 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]

EFFECTIVE DATE NOTE: At 65 FR 47650, Aug. 2, 2000, § 648.104 was amended by suspending the last sentence of paragraph (c) and adding paragraph (g), effective Aug. 2, 2000 through Jan. 29, 2001. For the convenience of the user, the added text follows:

§ 648.104 Gear restrictions.

* * * * *

(g) *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 (g), 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 paragraph (e) of this section, 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 § 648.104(a).

§ 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 in^3 (2.5 ft^3 or 70.79 cm^3).

[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.

Sea turtle regulations are found at 50 CFR parts 222 and 223.

[64 FR 57595, Oct. 26, 1999]

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

(a) Through September 5, 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 provisions of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries.

[64 FR 48967, Sept. 9, 1999]

EFFECTIVE DATE NOTE: At 65 FR 47651, Aug. 2, 2000, § 648.107 was amended by suspending paragraphs (a) and (b) and adding paragraphs (c) and (d), effective Aug. 2, 2000 through Jan. 29, 2001. For the convenience of the user, the added text follows:

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

* * * * *

(c) Through September 5, 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(h) 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.

(d) 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(h) 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(h) in accordance with the provisions of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries.

§ 648.108 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, 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 Council recommends that the management measures should be issued as a final rule, it 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 the regulations would 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 recommended management measures.

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

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

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, if after reviewing the Council's

recommendation and supporting information:

(i) NMFS concurs with the Council'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 (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council's recommended management measures 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 Council recommendation, the measures will be issued as a final rule and published in the FEDERAL REGISTER.

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

(4) *Emergency actions.* 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.

(b) [Reserved]

[64 FR 57595, Oct. 26, 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.

(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 commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) [Reserved]

(4) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, 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) Any overages of the commercial quota landed during the Summer period will be deducted from that period's allocation for the following year. Any overages of the commercial quota landed in any Winter period will be subtracted from the period's allocation for the following year.

[61 FR 43426, Aug. 23, 1996, as amended at 62 FR 27984, May 22, 1997; 65 FR 33497, May 24, 2000]

§ 648.121 Closures.

(a) *Period closures.* The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a 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) [Reserved]

[62 FR 27985, May 22, 1997, as amended at 65 FR 33497, May 24, 2000]

§ 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area.* (1) From January 1 through April 30, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, 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, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by

straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1	38°00′	74°20′
SGA2	38°40′	74°00′
SGA3	40°00′	72°30′
SGA4	40°00′	71°20′
SGA5	39°10′	72°47′
SGA6	38°00′	73°55′
SGA7	38°00′	74°20′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (c) of this section, the restrictions specified in paragraph (a)(1) of this section apply to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(b) *Northern Gear Restricted Area.* (1) From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section 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, unless otherwise specified in this section. The Northern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
NGA1	40°00′	72°50′
NGA2	41°10′	71°40′

NORTHERN GEAR RESTRICTED AREA—Continued

Point	N. Lat.	W. Long.
NGA3	41°10′	70°00′
NGA4	41°00′	70°00′
NGA5	41°00′	70°40′
NGA6	40°00′	71°30′
NGA7	40°00′	72°50′

(2) *Non-exempt species.* Unless otherwise specified in paragraphs (c) of this section, the restrictions specified in paragraph (b)(1) of this section apply to vessels in the Northern Gear Restricted Area that are fishing for, or in possession of, the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(c) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) *Addition or deletion of exemptions.* (1) An exemption may be added in an existing fishery for which there is sufficient information to ascertain the amount of scup bycatch, if the Regional Administrator, after consultation with the MAFMC, determines that the percentage of scup caught as bycatch is, or can be reduced to, less than 10 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 for scup, the Regional Administrator may take into consideration factors such as, but not limited to, juvenile mortality. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of scup is equal to or greater than 10 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.

(2) The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.108(a), additions or deletions to exemptions for fisheries other than scup.

(e) *Exempted experimental fishing.* The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area, use fishing gear that does not conform to the regulations, possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section, or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

[65 FR 33497, May 24, 2000]

§ 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 requirements in § 648.122 and 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 that 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 restrictions in § 648.122 and in paragraph (a)(1) of this section shall not use any

mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and 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, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum mesh requirement in § 648.122, 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 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; 65 FR 33498, May 24, 2000]

§ 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]

§ 648.127 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.108(a).

(1) *Adjustment process.* See § 648.108(a)(1).

(2) *Council recommendation.* See § 648.108(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.108(a)(i) through (iii).

(4) *Emergency actions.* See § 648.108(a)(4).

(b) [Reserved]

[64 FR 57595, Oct. 26, 1999, as amended at 64 FR 66587, Nov. 29, 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 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.

§ 648.147 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.108(a).

(1) *Adjustment process.* See § 648.108(a)(1).

(2) *Council recommendation.* See § 648.108(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.108(a)(i) through (iii).

(4) *Emergency actions.* See § 648.108(a)(4).

(b) [Reserved]

[64 FR 57595, Oct. 26, 1999, as amended at 64 FR 66587, Nov. 29, 1999]

Subpart J—Management Measures for the Atlantic Bluefish Fishery

SOURCE: 65 FR 45852, July 26, 2000, unless otherwise noted.

§ 648.160 Catch quotas and other restrictions.

The fishing year is from January 1 through December 31.

(a) *Annual review*. The Bluefish Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve a target fishing mortality rate (F) of 0.51 in 1999 and 2000; a target F of 0.41 in 2001, 2002, and 2003; a target F of 0.31 in 2004, 2005, 2006, and 2007; and a target F of 0.36 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; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) *Recommended measures*. Based on the annual review, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) A TAL 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 20 bluefish to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls and gill nets.

(c) *Allocation of the TAL*—(1) *Recreational harvest limit*. A total of 83 percent of the TAL will be allocated to the recreational fishery as a harvest limit.

(2) *Commercial quota*. A total of 17 percent of the TAL will be allocated to the commercial fishery as a quota. If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL.

(d) *Annual fishing measures*. The Council's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the Council measures necessary to assure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to assure that the applicable specified F will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social 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 on or about October 15, to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial and recreational fisheries to assure that the applicable specified F will not be exceeded. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER.

(e) *Distribution of annual commercial quota*. (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

STATE	PERCENTAGE
ME	0.6685
NH	0.4145
MA	6.7167
RI	6.8081
CT	1.2663
NY	10.3851

ANNUAL COMMERCIAL QUOTA SHARES—Continued

STATE	PERCENTAGE
NJ	14.8162
DE	1.8782
MD	3.0018
VA	11.8795
NC	32.0608
SC	0.0352
GA	0.0095
FL	10.0597
TOTAL	100.0000

NOTE: The ''Total'' does not actually add up to 100.0000 because of rounding error.

(2) All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish 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.

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish 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 bluefish 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 bluefish 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 Bluefish FMP and Magnuson-Stevens 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 notification 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 notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in 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 (e)(1) of this section.

(g) Based upon any changes in the landings data available from the states for the base years 1981-89, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (e)(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.

§ 648.161 Closures.

(a) *EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if the Regional Administrator determines that the inaction of one or more states will cause the applicable F specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS 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. NMFS 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 bluefish in that state.

§ 648.162 Minimum fish sizes.

If the Council determines through its annual review or framework adjustment process that minimum fish sizes are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objective, such measures will be enacted through the procedure specified in § 648.160(d) or 648.165.

§ 648.163 Gear restrictions.

If the Council determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in §§ 648.160(d) or 648.165.

§ 648.164 Possession restrictions.

(a) No person shall possess more than 10 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial 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) Bluefish 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 bluefish 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.

§ 648.165 Framework specifications.

(a) *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 Bluefish FMP.

(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 the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed

areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP.

(2) *Council recommendation*. After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council'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 Council recommends that the management measures should be issued as a final rule, the Council 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 Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

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

(3) *Action by NMFS*. If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council'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 (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council'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 Council's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

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

(b) *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.

Subpart K [Reserved]

Subpart L—Management Measures for the Spiny Dogfish Fishery

SOURCE: 65 FR 1570, Jan. 11, 2000, unless otherwise noted.

§ 648.230 Catch quotas and other restrictions.

(a) *Annual review*. The Spiny Dogfish Monitoring Committee will annually review the following data, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure a target fishing mortality rate (F) of 0.2 in 1999 through April 30, 2000, a target F of 0.03 from May 1, 2000, through April 30, 2003, and a target F of 0.08 thereafter will not be exceeded: Commercial and recreational catch data; current estimates of F; 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 data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

(b) *Recommended measures*. Based on this review, the Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a

commercial quota and any other measures including those in paragraphs (b)(1)-(b)(5) of this section that are necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year (May 1 through April 30) will not be exceeded. The quota may be set within the range of zero to the maximum allowed. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;
(2) Seasons;
(3) Mesh size restrictions;
(4) Trip limits; or
(5) Other gear restrictions.

(c) *Annual fishing measures.* The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a commercial quota and, possibly, other measures, including those specified in paragraph (b) of this section, necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year (May 1 through April 30) will not be exceeded. The commercial quota may be set within the range of zero to the maximum allowed. The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year will not be exceeded. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota and other management measures to assure that the target F specified in paragraph (a) of this section will not be exceeded. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils. After such review, NMFS shall publish a proposed rule in the FEDERAL REGISTER specifying a coastwide commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded. After considering public comments, NMFS shall publish a final rule in the FEDERAL REGISTER to implement such a quota and other measures.

(d) *Distribution of annual quota.* (1) The annual quota specified according to the process outlined in paragraph (a) of this section shall be allocated between two semi-annual quota periods as follows: May 1 through October 30 (57.9 percent) and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested.

§ 648.231 Closures.

The Regional Administrator shall determine the date by which the quota for each semi-annual period described in § 648.230(d)(1) will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of that semi-annual period by publishing a notification in the FEDERAL REGISTER. Upon the closure date and for the remainder of the semi-annual quota period, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

§ 648.232 Time Restrictions. [Reserved]

§ 648.233 Minimum Fish Sizes. [Reserved]

§ 648.234 Gear restrictions. [Reserved]

§ 648.235 Possession limit. [Reserved]

EFFECTIVE DATE NOTE: At 65 FR 25891, May 4, 2000, § 648.235 was added, effective May 1, 2000, through Oct. 28, 2000. For the convenience of the user, the new text follows:

§ 648.235 Possession and trip limit restrictions.

(a) *Quota Period 1.* From May 1 through October 31, vessels issued a

valid Federal spiny dogfish permit specified under § 648.4(a)(11) may land up to 600 lb (272 kg) of spiny dogfish per trip.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may land up to 300 lb (136 kg) of spiny dogfish per trip.

§ 648.236 Special Management Zones. [Reserved]

§ 648.237 Framework provisions.

(a) *Within season management action.* The Councils may, at any time, initiate action to add or adjust management measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size; maximum fish size; gear requirements, restrictions or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects.

(2) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. The Councils' recommendation must include supporting rationale, an analysis of impacts and, if management measures are recommended, a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, they 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 Councils' recommended management measures.

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

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

(3) *NMFS action.* If the Councils' recommendation includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Councils' 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, then the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the FEDERAL REGISTER.

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

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *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.

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

Sec.
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654.2 Definitions.
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Subpart B—Management Measures

654.20 Seasons.
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APPENDIX A TO PART 654—FIGURES
FIGURE 1—STONE CRAB CLAW
FIGURE 2—SOUTHWEST FLORIDA SEASONAL TRAWL CLOSURE
FIGURE 3—SHRIMP/STONE CRAB SEPARATION ZONES

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

SOURCE: 60 FR 13919, Mar. 15, 1995, unless otherwise noted.

Subpart A—General Measures

§654.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of stone crab and restricts the trawl fishery in the management area.

(c) ''EEZ'' refers to the EEZ in the management area, unless the context clearly indicates otherwise.

§654.2 Definitions.

In addition to the definitions in the Magnuson Act and in §620.2 of this chapter, the terms used in this part have the following meanings:

Management area means the EEZ off the coast of Florida from a line extending directly south from the Alabama/Florida boundary (87°31′06″ W. long.) to a line extending directly east from the Dade/Monroe County, FL boundary (25°20.4′ N. lat.).

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813–570–5301; or a designee.

Stone crab means *Menippe mercenaria, M. adina* or the hybrid, *M. adina* X *M. mercenaria*, or a part thereof.

§654.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in §620.3 of this chapter and paragraphs (b), (c), and (d) of this section.

(b) The regulations in this part are intended to be compatible with, and do not supersede, similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(c) The regulations in this part are intended to be compatible with similar regulations and statutes in effect in Florida's waters.

(d) Under Amendment 6 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico,

there is a temporary moratorium on the issuance by the Regional Director of Federal identification numbers and color codes for vessels and gear in the stone crab fishery in the management area. The moratorium will end not later than June 30, 2002. During the moratorium, fishermen must obtain identification numbers and color codes for these vessels and gear from the State of Florida. (See § 654.6(a).)

[60 FR 13919, Mar. 15, 1995, as amended at 63 FR 44595, Aug. 20, 1998]

§ 654.4 Permits and fees. [Reserved]

§ 654.5 Recordkeeping and reporting. [Reserved]

§ 654.6 Vessel and gear identification.

(a) An owner or operator of a vessel that is used to harvest stone crabs by traps in the management area must comply with the vessel and gear identification requirements applicable to the harvesting of stone crabs by traps in Florida's waters in effect as of April 14, 1995, in Rule 62N–8.001 and Rule 46–13.002(2) (e) and (f), Florida Administrative Code. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; or the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(b) A stone crab trap or buoy in the EEZ that is not in compliance with the gear identification requirements specified in paragraph (a) of this section is illegal. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

[60 FR 13919, Mar. 15, 1995; 60 FR 20196, Apr. 28, 1995]

§ 654.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to display and maintain vessel and gear identification, as required by § 654.6(a).

(b) Possess a stone crab in the management area during the period specified in § 654.20(a).

(c) Possess a stone crab trap in the management area during the period specified in § 654.20(c).

(d) Remove from a stone crab in or from the management area, or possess in the management area, a claw that is less than the minimum size limit specified in § 654.21(a).

(e) Fail to return immediately to the water unharmed an egg-bearing stone crab, or strip eggs from or otherwise molest an egg-bearing stone crab; as specified in § 654.21(b).

(f) Hold a stone crab in or from the management area aboard a vessel other than as specified in § 654.21(c).

(g) Use or possess in the management area a stone crab trap that does not have a biodegradable panel, as specified in § 654.22(a).

(h) Pull or tend a stone crab trap in the management area other than during daylight hours, as specified in § 654.22(b).

(i) Willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area, as specified in § 654.22(c).

(j) Trawl in a closed area or during a closed season, as specified in §§ 654.23 or 654.24, or as may be implemented under § 654.25(b).

(k) Place a stone crab trap in a closed area or during a closed season, as specified in § 654.24, or as may be implemented under § 654.25(b).

(l) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 654.25(a).

(m) Make any false statement, oral or written, to an authorized officer

concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of stone crab.

(n) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 654.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 654.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 654.20 Seasons.

(a) *Closed season.* No person may possess a stone crab in the management area from 12:01 a.m., local time, May 16, through 12 p.m. midnight, local time, October 14, each year. Holding a stone crab in a trap in the water during a soak period or during a removal period (see paragraph (b) of this section), or during any extension thereto, is not deemed possession, provided that, if the trap is removed from the water during such period, such crab is returned immediately to the water with its claws unharvested.

(b) *Placement of traps.* (1) *Prior to the fishing season.* The period of October 5 through October 14 is established as a trap soak period. A stone crab trap may be placed in the management area not earlier than 1 hour before sunrise on October 5.

(2) *After the fishing season.* The period of May 16 through May 20 is established as a trap removal period. A stone crab trap must be removed from the management area not later than 1 hour after sunset on May 20, unless an extension to the removal period is granted under paragraph (b)(2)(i) of this section and the extension authorization is carried aboard the fishing vessel as specified in paragraph (b)(2)(ii) of this section.

(i) An extension of the removal period may be granted by Florida in accordance with Rule 46–13.002(2)(b), Florida Administrative Code, in effect as of April 14, 1995. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the office of the Regional Director, or the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

(ii) The extension authorization must be carried aboard the fishing vessel. The operator of a fishing vessel must present the authorization for inspection upon request of an authorized officer.

(c) *Possession of stone crab traps.* A stone crab trap may not be possessed in the management area from the end of the trap removal period, or an extension thereto, to the beginning of the trap soak period, as specified in paragraph (b) of this section. A stone crab trap, float, or rope in the management area during this period will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties.

§ 654.21 Harvest limitations.

(a) *Claw size.* No person may remove from a stone crab in or from the management area, or possess in the management area, a claw with a propodus measuring less than 2.75 inches (7.0 cm), measured in a straight line from the elbow to the tip of the lower immovable finger. The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended. (See Appendix A, Figure 1, of this part.)

(b) *Egg-bearing stone crabs.* An egg-bearing stone crab in or from the management area must be returned immediately to the water unharmed—without removal of a claw. An egg-bearing stone crab may not be stripped of its eggs or otherwise molested.

(c) *Holding stone crabs.* A live stone crab in or from the management area may be held aboard a vessel until such

time as a legal-sized claw is removed, provided it is held in a container that is shaded from direct sunlight and it is wet with sea water as necessary to keep it in a damp condition. Containers holding stone crabs must be stacked in a manner that does not compress the crabs. A stone crab body from which a legal-sized claw has been removed must be returned to the sea before the vessel reaches shore or a port or dock.

§ 654.22 Gear restrictions.

(a) *Trap construction requirements.* No person fishing for stone crab may transport on the water or fish with any trap which does not meet the following requirements:

(1) Each trap must be constructed of wood, plastic, or wire.

(2) A trap may be no larger in dimension than 24 by 24 by 24 inches (61 by 61 by 61 cm) or 8.0 ft^3 (0.23 m^3).

(3) The throats (entrances) to all wood and plastic traps must be located on the top horizontal section of the trap. If the throat is longer in one dimension, the throat size in the longer dimension must not exceed 5½ inches (14.0 cm) and in the shorter dimension must not exceed 3½ inches (9.0 cm). If the throat is round, the throat size must not exceed 5 inches (12.7 cm) in diameter.

(4) In any wire trap used to harvest stone crabs, each throat must be horizontally oriented. The width of the opening where the throat meets the vertical wall of the trap and the opening of the throat at its farthest point from the vertical wall, inside the trap, must be greater than the height of any such opening. No such throat may extend farther than 6 inches (15.2 cm) into the inside of any trap, measured from where the throat opening meets the vertical wall of the trap to the throat opening at its farthest point from the vertical wall, inside the trap.

(5) A wire trap must have at least three unobstructed escape rings installed, each with a minimum inside diameter of 2⅜ inches (6.0 cm). One such escape ring must be located on a vertical outer surface adjacent to each crab retaining chamber.

(6) A plastic or wire trap must have a degradable panel.

(i) A plastic trap will be considered to have degradable panel if it contains at least one sidewall with a rectangular opening no smaller in either dimension than that of the throat. This opening may be obstructed only with a cypress or untreated pine slat or slats no thicker than ¾ inch (1.9 cm) such that when the slat degrades, the opening in the sidewall of the trap will no longer be obstructed.

(ii) A wire trap will be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(A) The trap lid tie-down strap is secured to the trap at one end by a single loop of untreated jute twine, a corrodible loop composed of non-coated steel wire measuring 24 gauge or thinner, or an untreated pine dowel no larger than 2 inches (5.1 cm) in length by ⅜ inch (0.95 cm) in diameter. The trap lid must be secured so that when the jute, corrodible loop, or pine dowel degrades, the lid will no longer be securely closed.

(B) The trap contains at least one sidewall with a vertical rectangular opening no smaller in either dimension than 6 inches (15.2 cm) in height by 3 inches (7.6 cm) in width. This opening may be laced, sewn, or otherwise obstructed by—

(*1*) A single length of untreated jute twine knotted only at each end and not tied or looped more than once around a single mesh bar;

(*2*) Untreated pine slat(s) no thicker than ⅜ inch (0.95 cm);

(*3*) Non-coated steel wire measuring 24 gauge or thinner;

(*4*) A panel of ferrous single-dipped galvanized wire mesh made of 24 gauge or thinner wire; or

(*5*) A rectangular panel made of any material, fastened to the trap at each of the four corners of the rectangle by rings made of non-coated 24 gauge or thinner wire or single strands of untreated jute twine. When the jute, untreated pine slat(s), non-coated steel wire, wire mesh panel, or corner fasteners degrade, the opening in the sidewall of the trap must no longer be obstructed.

(b) *Daylight hours.* A stone crab trap in the management area may be pulled or tended during daylight hours only—

that is, from 1 hour before sunrise to 1 hour after sunset.

(c) *Gear belonging to others.* No fisherman may willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area without the prior written consent of that fisherman.

[60 FR 13919, Mar. 15, 1995, as amended at 65 FR 31835, May 19, 2000]

§ 654.23 Southwest Florida seasonal trawl closure.

From January 1 to 1 hour after sunset (local time) May 20, each year, the area described in this section is closed to trawling, including trawling for live bait. The area is that part of the management area shoreward of a line connecting the following points (see Appendix A, Figure 2, of this part):

Point	North Latitude	West Longitude
B[1]	26°16′	81°58.5′
C	26°00′	82°04′
D	25°09′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

§ 654.24 Shrimp/stone crab separation zones.

Five zones are established in the management area and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. The zones are as shown in Appendix A, Figure 3, of this part. Although Zone II is entirely within Florida's waters, it is included in this section and Appendix A, Figure 3, of this part for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph and shown in Appendix A, Figure 3, of this part are as follows (loran readings are unofficial and are included only for the convenience of fishermen):

Point	North latitude	West longitude	Loran Chain 7980			
			W	X	Y	Z
A	28°59′30″	82°45′36″	14416.5	31409.4	45259.1	62895.3
B	28°59′30″	83°00′10″	14396.0	31386.3	45376.8	63000.0
C	28°26′01″	82°59′47″	14301.5	31205.9	45103.2	63000.0
D	28°26′01″	82°56′54″	14307.0	31212.2	45080.0	62981.3
E	28°41′39″	82°55′25″	14353.7	31300.2	45193.9	62970.0
F	28°41′39″	82°56′09″	14352.4	31298.6	45199.4	62975.0
G	28°48′56″	82°56′19″	14372.6	31337.2	45260.0	62975.0
H	28°53′51″	82°51′19″	14393.9	31371.8	45260.0	62938.7
I	28°54′43″	82°44′52″	(1)	(1)	(1)	(1)
J	28°51′09″	82°44′00″	(2)	(2)	(2)	(2)
K	28°50′59″	82°54′16″	14381.6	31351.8	45260.0	62960.0
L	28°41′39″	82°53′56″	14356.2	31303.0	45181.7	62960.0
M	28°41′39″	82°38′46″	(3)	(3)	(3)	(3)
N	28°41′39″	82°53′12″	14357.4	31304.4	45176.0	62955.0
O	28°30′51″	82°55′11″	14323.7	31242.4	45104.9	62970.0
P	28°40′00″	82°53′08″	14352.9	31295.7	45161.8	62955.0
Q	28°40′00″	82°47′58″	14361.3	31305.4	45120.0	62920.0
R	28°35′14″	82°47′47″	14348.6	31280.6	45080.0	62920.0
S	28°30′51″	82°52′55″	14327.7	31247.0	45086.6	62955.0
T	28°27′46″	82°55′09″	14315.2	31225.8	45080.0	62970.0
U	28°30′51″	82°52′09″	14329.1	31248.6	45080.0	62949.9

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(a) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ during the period October 5 through May 20, each year.

(b) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(c) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ during the period October 5 through May 20, each year.

(d) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(1) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ during the periods October 5 through December 1, and April 2 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone IV that is in the EEZ during the period December 2 through April 1, each year.

(e) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(1) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ during the periods October 5 through November 30, and March 16 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone V that it is in the EEZ during the period December 1 through March 15, each year.

(f) A stone crab trap, float, or rope in the management area during a period not authorized by this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.25 Prevention of gear conflicts.

(a) No person may knowingly place in the management area any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and limitations of the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Director may modify or establish separation zones for shrimp trawling and the use of fixed gear as may be necessary and appropriate to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

§ 654.26 Adjustment of management measures.

In accordance with the procedures and limitations of the fishery management plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Director may establish or modify the following management measures: Limitations on the number of traps that may be fished by each vessel; construction characteristics of traps; gear and vessel identification requirements; gear that may be used or prohibited in a directed fishery; bycatch levels in non-directed fisheries; seasons; soak/removal periods and requirements for traps; use, possession and handling of stone crabs aboard vessels; and minimum legal sizes.

§ 654.27 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

APPENDIX A TO PART 654—FIGURES

Figure 1—Stone Crab Claw
Figure 2—Southwest Florida Seasonal Trawl Closure
Figure 3—Shrimp/Stone Crab Separation Zones

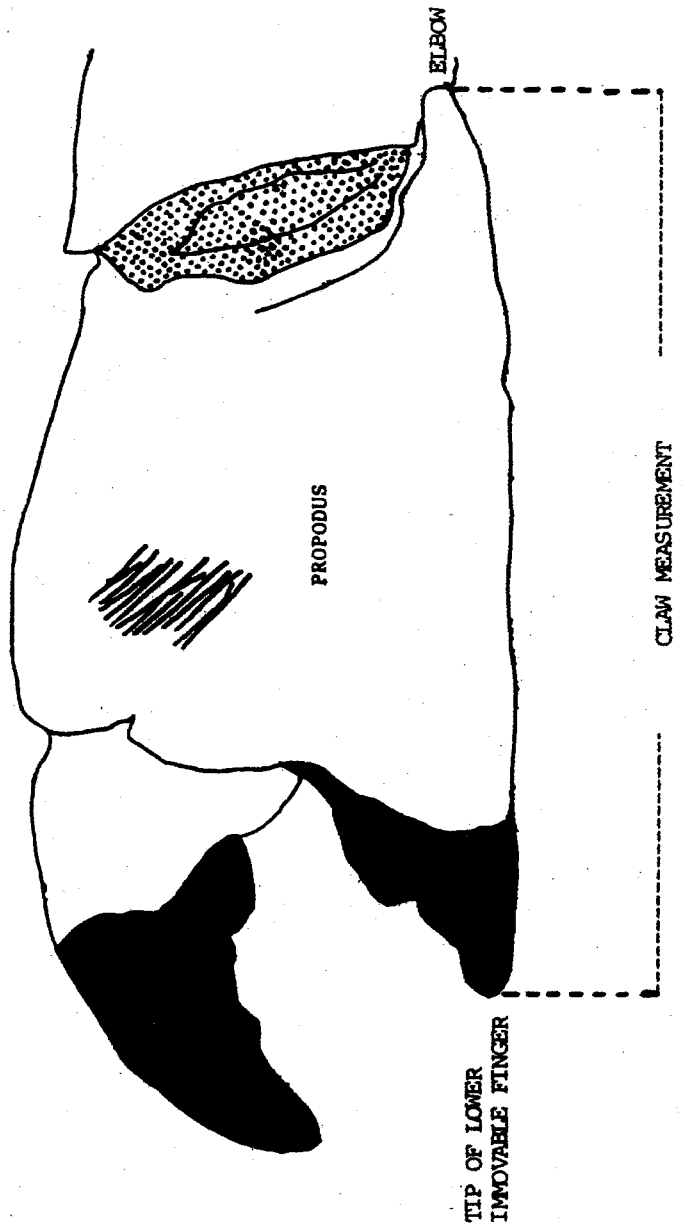

FIGURE 1. STONE CRAB CLAW

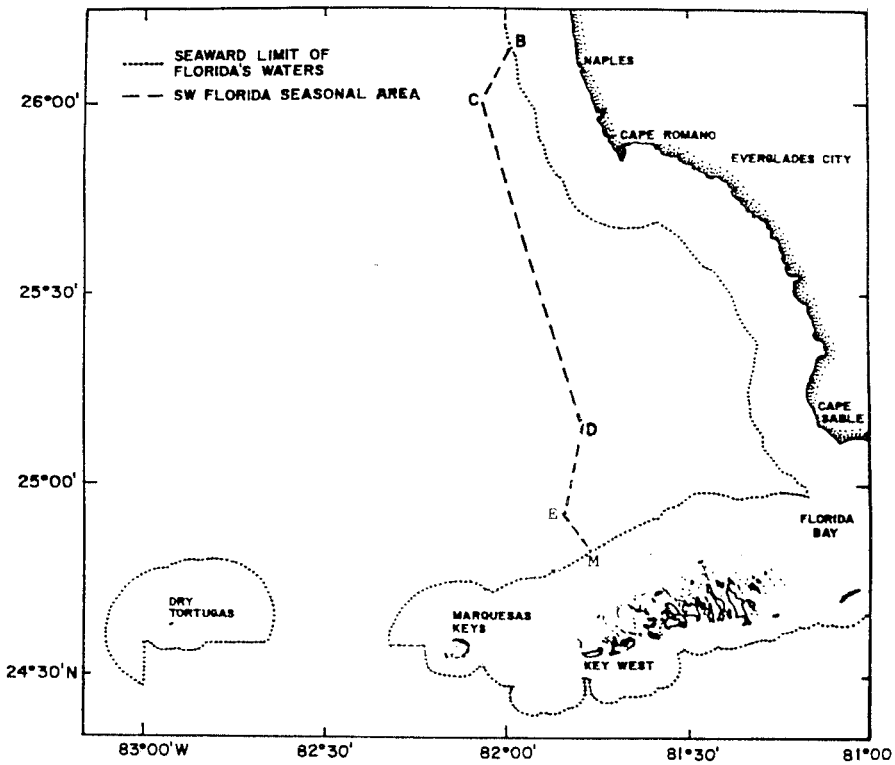

FIGURE 2. SOUTHWEST FLORIDA SEASONAL TRAWL CLOSURE

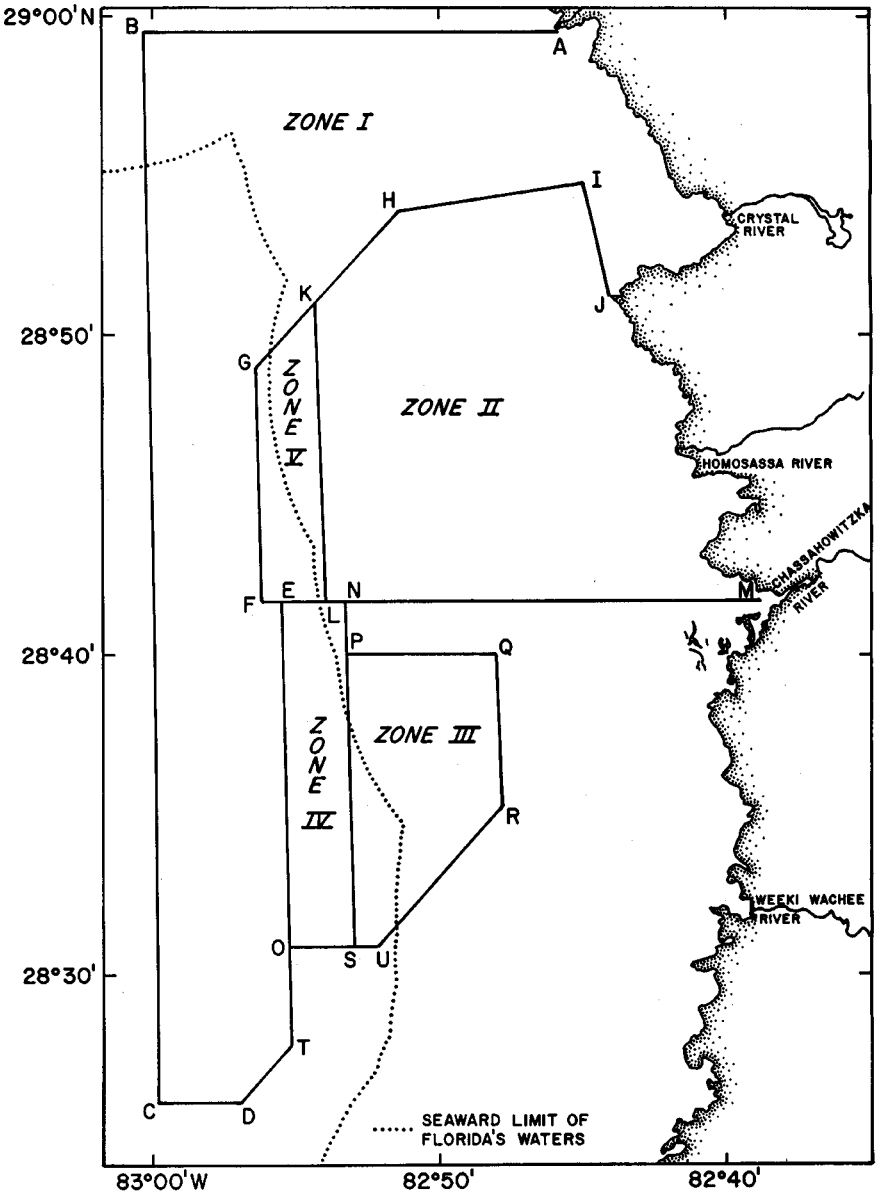

Figure 3. Shrimp/stone crab separation zones.

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

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

SOURCE: 61 FR 34572, July 2, 1996, unless otherwise noted.

Subpart A—General

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing for Western Pacific and West Coast fishery management unit species by vessels of the United States that operate or are based inside the outer boundary of the EEZ off Western Pacific and West Coast States.

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in part 600 of this chapter.

§ 660.2 Relation to other laws.

NMFS recognizes that any state law pertaining to vessels registered under the laws of that state while operating in the fisheries regulated under this part, and that is consistent with this part and the FMPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 660.3 Reporting and recordkeeping.

Except for fisheries subject to subparts D and F of this part, any person who is required to do so by applicable state law or regulation must make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable state law or regulation.

Subpart B—Western Pacific Fisheries—General

§ 660.11 Purpose and scope.

(a) This subpart contains regulations that are common to all Western Pacific fisheries managed under fishery management plans prepared by the Western Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations specific to individual fisheries are included in subparts C, D, E, and F of this part.

§ 660.12 Definitions.

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

Bottomfish FMP means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region.

Bottomfish management area means the areas designated in § 660.69.

Bottomfish management unit species means the following fish:

Common name	Local name	Scientific name
Snappers:		
Silver jaw jobfish	Lehi (H); palu-gustusilvia (S)	*Aphareus rutilans.*
Gray jobfish	Uku (H); asoama (S)	*Aprion virescens.*
Squirrelfish snapper	Ehu (H); palu-malau (S)	*Etelis carbunculus.*
Longtail snapper	Onaga, ula'T1ula (H); palu-loa (S)	*Etelis coruscans.*

Common name	Local name	Scientific name
Blue stripe snapper	Ta'ape (H); savane (S); funai (G)	*Lutjanus kasmira.*
Yellowtail snapper	Palu-i' lusama (S); yellowtail kalekale	*Pristipomoides auricilla.*
Pink snapper	Opakapaka (H); palu-'Tlena'lena (S); gadao (G).	*Pristipomoides.*
Yelloweye snapper	Palusina (S); yelloweye opakapaka	*Pristipomoides flavipinnis.*
Snapper	Kalekale (H)	*Pristipomoides sieboldii.*
Snapper	Gindai (H,G); palu-sega (S)	*Pristipomoides zonatus.*
Jacks:		
Giant trevally	White ulua (H); tarakito (G); sapo-anae (S).	*Caranx ignoblis.*
Black jack	Black ulua (H); tarakito (G); tafauli (S)	*Caranx lugubris.*
Thick lipped trevally	Pig ulua (H); butaguchi (H)	*Pseudocaranx dentex.*
Amberjack	Kahala (H)	*Seriola dumerili.*
Groupers:		
Blacktip grouper	Fausi (S); gadau (G)	*Epinephelus fasciatus.*
Sea bass	Hapu' 1upu'u (H)	*Epinephelus quernus.*
Lunartail grouper	Papa (S)	*Variola louti.*
Emperor fishes:		
Ambon emperor	Filoa-gutumumu (S)	*Lethrinus amboinensis.*
Redgill emperor	Filoa-pa'lo'omumu (S); mafuti (G)	*Lethrinus rubrioperculatus.*

NOTES: G—Guam; H—Hawaii; S—American Samoa.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1 of this part).

Commercial fishing, as used in subpart D of this part, means fishing with the intent to sell all or part of the catch of lobsters. All lobster fishing in Crustaceans Permit Area 1 is considered commercial fishing.

Council means the Western Pacific Fishery Management Council.

Crustaceans FMP means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region.

Crustaceans management area means the combined portions of the EEZ encompassed by Crustaceans Permit Areas 1, 2, and 3.

Crustaceans management unit species means spiny lobster (*Panulirus marginatus* or *Panulirus penicillatus*), slipper lobster (family *Scyllaridae*), and Kona crab (*Ranina ranina*).

Crustaceans Permit Area 1 (Permit Area 1) means the EEZ off the Northwestern Hawaiian Islands.

Crustaceans Permit Area 2 (Permit Area 2) means the EEZ off the main Hawaiian Islands.

Crustaceans Permit Area 3 (Permit Area 3) means the EEZ of the Territory of Guam and the EEZ of the Territory of American Samoa.

Crustaceans Permit Area 1 VMS Subarea means an area within the EEZ off the NWHI 50 nm from the center geographical positions of the islands and reefs in the NWHI as follows: Nihoa Island 23°05′ N. lat., 161°55′ W. long.; Necker Island 23°35′ N. lat., 164°40′ W. long.; French Frigate Shoals 23°45′ N. lat., 166°15′ W. long; Garner Pinnacles 25°00′ N. lat., 168°00′ W. long.; Maro Reef 25°25′ N. lat., 170°35′ W. long.; Laysan Island 25°45′ N. lat., 171°45′ W. long; Lisianski Island 26°00′ N. lat., 173°55′ W. long.; Pearl and Hermes Reef 27°50′ N. lat., 175°50′ W. long.; Midway Islands 28°14′ N. lat., 177°22′ W. long.; and Kure Island 28°25′ N. lat., 178°20′ W. long. The remainder of the VMS subarea is delimited by parallel lines tangent to and connecting the 50–nm areas around the following: from Nihoa Island to Necker Island; from French Frigate Shoals to Gardner Pinnacles; from Gardner Pinnacles to Maro Reef; from Laysan Island to Lisianski Island; and from Lisianski Island to Pearl and Hermes Reef.

Crustaceans receiving vessel means a vessel of the United States to which lobster taken in Permit Area 1 are transferred from another vessel.

Dead coral means any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

EFP means an experimental fishing permit.

First level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that

holds a permit or is otherwise regulated under subpart D of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

Fish dealer means any person who:

(1) Obtains, with the intention to resell, Pacific pelagic management unit species, or portions thereof, that were harvested or received by a vessel that holds a permit or is otherwise regulated under subpart E of this part; or

(2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such management unit species (such as the services provided by a wholesale auction facility).

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Southwest Regional Office, NMFS, or a designee. See Table 1 to § 600.502 for the address of the Regional Office.

Fishing gear, as used in subpart D of this part, includes:

(1) *Bottom trawl,* which means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed.

(2) *Gillnet,* (see § 600.10).

(3) *Hook-and-line,* which means one or more hooks attached to one or more lines.

(4) *Set net,* which means a stationary, buoyed, and anchored gill net.

(5) *Trawl,* (see § 600.10).

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Harvest guideline means a specified numerical harvest objective.

Hawaii longline limited access permit means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species with longline gear in the EEZ around Hawaii or to land or transship longline-caught Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

Incidental catch or *incidental species* means species caught while fishing for the primary purpose of catching a different species.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under subpart D of this part, and any person who has notified the Regional Director of his or her interest in the procedures and decisions described in §§ 660.51 and 660.52, and who has specifically requested to be considered an ''interested party.''

Land or *landing* means offloading fish from a fishing vessel, arriving in port to begin offloading fish, or causing fish to be offloaded from a fishing vessel.

Length overall (LOA) or *length* of a vessel, as used in § 660.21(i), means the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 of this part). ''Stem'' is the foremost part of the vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. ''Stern'' is the aftermost part of the vessel.

Live coral means any precious coral that is free of holes from borers, and has no discoloration or encrustation on the skeleton at the time of removal from the seabed.

Lobster closed area means an area of the EEZ that is closed to fishing for lobster.

Lobster grounds refers, singularly or collectively, to the following four areas in Crustaceans Permit Area 1 that shall be used to manage the lobster fishery:

(1) *Necker Island Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24°00′ N. lat., 164° 00′ W. long.; 23°00′ N. lat., 164°00′ W. long.; and 23°00′ N. lat., 165°00′ W. long.

(2) *Gardner Pinnacles Lobster Grounds*—waters bounded by straight

lines connecting the following coordinates in the order presented: 25°20′ N. lat., 168°20′ W. long.; 25°20′ N. lat., 167° 40′ W. long.; 24°20′ N. lat., 167°40′ W. long.; and 24°20′ N. lat., 168°20′ W. long.

(3) *Maro Reef Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40′ N. lat., 171°00′ W. long.; 25°40′ N. lat., 170° 20′ W. long.; 25°00′ N. lat., 170°20′ W. long.; and 25°00′ N. lat., 171°00′ W. long.

(4) *General NWHI Lobster Grounds*—all waters within Crustaceans Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in § 660.26.

Longline fishing vessel means a vessel that has longline gear on board the vessel.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nm in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Longline general permit means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species in the fishery management area, excluding the EEZ around Hawaii, or to land or transship longline-caught fish shoreward of the outer boundary of the fishery management area, excluding the waters shoreward of the EEZ around Hawaii.

Main Hawaiian Islands means the islands of the Hawaiian Islands Archipelago lying to the east of 161° W. long.

Non-precious coral means any species of coral other than those listed under the definition for precious coral in this section.

Non-selective gear means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

Northwestern Hawaiian Islands (NWHI) means the islands of the Hawaiian Islands Archipelago lying to the west of 161° W. long.

Offloading means removing management unit species from a vessel.

Owner, as used in subparts C and D of this part and § 660.61(i) through (m), means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state, a territory, or the USCG for an undocumented vessel. As used in subpart F of this part and § 660.61(c) through (h), the definition of ''owner'' in § 600.10 of this chapter continues to apply.

Pacific Islands Area Office means the Pacific Islands Area Office, (PIAO) Southwest Region, NMFS, located in Honolulu, Hawaii. The address and phone number may be obtained from the Regional Administrator, whose address is in Table 1 to § 600.502 of this chapter.

Pacific pelagic management unit species means the following fish:

Common name	Scientific name
Mahimahi (dolphin fish)	*Coryphaena* spp.
Marlin and spearfish	*Makaira* spp. *Tetrapturus* spp.
Oceanic sharks	Family Alopiidae. Family Carcharhinidae. Family Lamnidae. Family Sphyrnidae.
Sailfish	*Istiophorus platypterus.*
Swordfish	*Xiphias gladius.*
Tuna and related species	*Allothunnus* spp., *Auxis* spp. *Euthynnus* spp., *Gymnosarda* spp. *Katsuwonus* spp., *Scomber* spp. *Thunnus* spp.
Wahoo	*Acanthocybium solandri.*

Pelagics FMP means the Fishery Management Plan for Pelagic Species Fisheries of the Western Pacific Region.

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

Common name	Scientific name
Pink coral (also known as red coral).	*Corallium secundum.*
Pink coral (also known as red coral).	*Corallium regale.*

Common name	Scientific name
Pink coral (also known as red coral).	*Corallium laauense.*
Gold coral	*Gerardia* spp.
Gold coral	*Callogorgia gilberti.*
Gold coral	*Narella* spp.
Gold coral	*Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa.*
Bamboo coral	*Acanella* spp.
Black coral	*Antipathes dichotoma.*
Black coral	*Antipathes grandis.*
Black coral	*Antipathes ulex.*

Precious coral permit area means the area encompassing the precious coral beds in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) *Established beds.* Makapuu (Oahu), Permit Area E–B–1, includes the area within a radius of 2.0 nm of a point at 21°18.0′ N. lat., 157°32.5′ W. long.

(2) *Conditional beds.* (i) Keahole Point (Hawaii), Permit Area C–B–1, includes the area within a radius of 0.5 nm of a point at 19°46.0′ N. lat., 156°06.0′ W. long.

(ii) Kaena Point (Oahu), Permit Area C–B–2, includes the area within a radius of 0.5 nm of a point at 21°35.4′ N. lat., 158°22.9′ W. long.

(iii) Brooks Bank, Permit Area C–B–3, includes the area within a radius of 2.0 nm of a point at 24°06.0′ N. lat., 166°48.0′ W. long.

(iv) 180 Fathom Bank, Permit Area C–B–4, N.W. of Kure Atoll, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 178°53.4′ W. long.

(3) *Refugia.* Westpac Bed, Permit Area R–1, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 162°35.0′ W. long.

(4) *Exploratory areas.* (1) Permit Area X–P–H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

(ii) Permit Area X–P–AS includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.

(iii) Permit Area X–P–G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(iv) Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.

Protected species means an animal protected under the MMPA, listed under the ESA, or subject to the Migratory Bird Treaty Act, as amended.

Protected species study zones means the waters within a specified distance, designated by the Regional Director pursuant to § 660.66, around the following islands of the NWHI and as measured from the following coordinates: Nihoa Island 23°05′ N. lat., 161°55′ W. long.; Necker Island 23°35′ N. lat., 164°40′ W. long.; French Frigate Shoals 23°45′ N. lat., 166°15′ W. long.; Gardner Pinnacles 25°00′ N. lat., 168°00′ W. long.; Maro Reef 25°25′ N. lat., 170°35′ W. long.; Laysan Island 25°45′ N. lat., 171°45′ W. long.; Lisianski Island 26°00′ N. lat., 173°55′ W. long.; Pearl and Hermes Reef 27°50′ N. lat., 175°50′ W. long.; Midway Island 28°14′ N. lat., 177°22′ W. long.; and Kure Island 28°25′ N. lat., 178°20′ W. long. The protected species study zones encompasses waters within 50 nm of the geographical coordinates listed above.

Protected species zone means an area, designated under § 660.26, measured from the center geographical positions of certain islands and reefs in the NWHI, as follows: Nihoa Island 23°05′ N. lat., 161°55′ W. long.; Necker Island 23°35′ N. lat., 164°40′ W. long.; French Frigate Shoals 23°45′ N. lat., 166°15′ W. long; Gardner Pinnacles 25°00′ N. lat., 168°00′ W. long.; Maro Reef 25°25′ N. lat., 170°35′ W. long.; Laysan Island 25°45′ N. lat., 171°45′ W. long; Lisianski Island 26°00′ N. lat., 173°55′ W. long.; Pearl and Hermes Reef 27°50′ N. lat., 175°50′ W. long.; Midway Islands 28°14′ N. lat., 177°22′ W. long.; and Kure Island 28°25′ N. lat., 178°20′ W. long. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

Receiving vessel permit means a permit required by § 660.21(c) for a receiving vessel to transship or land Pacific pelagic management unit species taken by other vessels using longline gear.

Regional Director means the Director, Southwest Region, NMFS (see Table 1 of § 600.502 for address).

Seamount groundfish means the following species:

Common name	Scientific name
Armorhead	Pentaceros richardsoni.
Alfonsin	Beryx splendens.
Raftfish	Hyperoglyphe japonica.

Selective gear means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

Transship means offloading or otherwise transferring management unit species or products thereof to a receiving vessel.

Trap means a box-like device used for catching and holding lobsters.

U.S. harvested corals means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

Vessel monitoring system unit (VMS unit) means the hardware and software owned by NMFS, installed on vessels by NMFS, and required by subpart C of this part to track and transmit the positions of longline vessels or the hardware and software used by vessels to track and transmit the positions of vessels permitted under subpart D of this part to fish in Crustaceans Permit Area 1.

[61 FR 34572, July 2, 1996, as amended at 62 FR 35449, July 1, 1997; 62 FR 47587, Sept. 10, 1997; 62 FR 43294, Aug. 13, 1997; 63 FR 20540, Apr. 27, 1998; 63 FR 29355, May 29, 1998; 64 FR 22811, Apr. 28, 1999; 64 FR 36822, July 8, 1999]

§ 660.13 Permits and fees.

(a) *Applicability*. The requirements for permits for specific Western Pacific fisheries are set forth in subparts C through F of this part.

(b) *Validity*. Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) *Application*. (1) A Southwest Region Federal Fisheries application form may be obtained from the Pacific Area Office to apply for a permit to operate in any of the fisheries regulated under subparts C, D, E, and F of this part. In no case shall the Pacific Area Office accept an application that is not on the Southwest Region Federal Fisheries application form. A completed application is one that contains all the necessary information, attachments, certifications, signatures, and fees required.

(2) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Change in application information*. A minimum of 10 days should be given for the Pacific Area Office to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in invalidation of the permit.

(e) *Issuance*. After receiving a complete application, the FMD will issue a permit to an applicant who is eligible under § 660.21, § 660.41, § 660.61, or § 660.81, as appropriate.

(f) *Fees*. (1) PIAO will not charge a fee for a permit issued under subpart D or F of this part, or for a Ho'omalu Zone limited access permit issued under § 660.61.

(2) PIAO will charge a fee for each application for a Hawaii longline limited access permit (including permit transfers and permit renewals) and Mau Zone limited access permit (including permit renewals). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining the 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. Failure to pay the fee will preclude issuance of a Hawaii longline or Mau Zone limited access permit.

(g) *Expiration.* (1) Permits issued under subparts C, D, and F of this part are valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

(2) Permits issued under subpart E of this part expire at 2400 local time on December 31.

(h) *Replacement.* Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) *Transfer.* An application for a permit transfer under §§660.21(h), 660.41(e), or 660.61(e), or for registration of a permit for use with a replacement vessel under §660.61(k), must be submitted to the PIAO as described in paragraph (c) of this section.

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

(k) *Display.* Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing management unit species shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(l) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

(m) *Permit appeals.* Procedures for appeals of permit and administrative actions are specified in the relevant subparts of this part.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22812, Apr. 28, 1999]

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§660.21, 660.41, or 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the fishing vessel operator.

(b) *Transshipment logbooks.* Any person subject to the requirements of §660.21(c) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours of the day of transshipment. The original logbook form for each day of transshipment activity must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the receiving vessel operator.

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of §660.41 must submit to the Regional Director, within 72 hours of offloading of crustaceans management unit species, an accurate and complete sales report on a form provided by the Regional Director. The form must be signed and dated by the fishing vessel operator.

(d) *Packing or weigh-out slips.* The operator of any fishing vessel subject to the requirements of §660.41 must attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing or weighout slips have not been provided in time by the buyer(s).

(e) *Modification of reporting and recordkeeping requirements.* The Regional Director may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing record forms, transshipment logbook, and sales report forms and timeliness by which the information is to be provided, including the submission of packing or weighout slips.

(f) *Availability of records for inspection.* (1) *Pacific pelagic management unit species.* Upon request, any fish dealer must immediately provide an authorized officer access for inspecting and copying all records of purchases, sales, or other transactions involving Pacific pelagic management unit species taken or handled by longline vessels that have permits issued under this subpart or that

are otherwise subject to subpart C of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The weight, number, and size of each species of fish involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(2) *Crustaceans management unit species.* Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Director, to access, inspect, and copy all records relating to the harvest, sale, or transfer of crustacean management unit species taken by vessels that have permits issued under this subpart or that are otherwise subject to subpart D of this part. This requirement may be met by furnishing the information on a worksheet provided by the Regional Director. The information must include, but is not limited to:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The amount, number, and size of each management unit species involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(3) *Bottomfish and seamount groundfish management unit species.* Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and subpart E of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(g) *State reporting.* Any person who has a permit under §§660.21 or 660.61 and who is required by state laws and regulations to maintain and submit records of landings and sales for vessels regulated by subparts C and E of this part must maintain and submit those records in the exact manner required by state laws and regulations.

[61 FR 34572, July 2, 1996, as amended at 62 FR 27524, May 20, 1997]

§ 660.15 Prohibitions.

In addition to the prohibitions in §600.725 of this chapter, it is unlawful for any person to:

(a) Engage in fishing without a valid permit or facsimile of a valid permit on board the vessel and available for inspection by an authorized officer, when a permit is required under §660.13 or §660.17, unless the vessel was at sea when the permit was issued under §660.13, in which case the permit must be on board the vessel before its next trip.

(b) File false information on any application for a fishing permit under §660.13 or an EFP under §660.17.

(c) Fail to file reports in the exact manner required by any state law or regulation, as required in §660.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§660.14 and 660.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Director for inspection or copying, any records that must be made available in accordance with §660.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§660.16, 660.24, and 660.47.

(g) Violate a term or condition of an EFP issued under §660.17.

(h) Fail to report any take of or interaction with protected species as required by §660.17(k).

(i) Fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS to make accommodations available for an observer under §§660.17, 660.28, 660.49, or 660.65.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Director under §660.28, §660.49, or §660.65, or under any provision in an EFP issued under §660.17.

(k) Fail to notify officials as required in §§660.23, 660.28, 660.43, and 660.63.

§ 660.16 Vessel identification.

(a) Each fishing vessel subject to this subpart must 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 visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this subpart and subparts C, D, E, and F of this part, in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing and receiving vessels of 65 ft (19.8 m) LOA or longer, and at least 10 inches (25.4 cm) in height for all other vessels, except vessels subject to Subpart F and 65 ft (19.8 m) LOA or longer must be marked in block Arabic numerals at least 14 inches (35.6 cm) in height. Marking must be legible and of a color that contrasts with the background.

(c) The vessel operator must ensure that the official number is clearly legible and in good repair.

(d) The vessel operator must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

§ 660.17 Experimental fishing.

(a) *General.* The Regional Director may authorize, for limited purposes, the direct or incidental harvest of management unit species that would otherwise be prohibited by this subpart and subparts C, D, E, and F of this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Director in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Observers.* No experimental fishing for crustacean management unit species may be conducted unless an NMFS scientific observer is aboard the vessel.

(c) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

(5) For each vessel to be covered by the EFP:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) *Incomplete applications.* The Regional Director may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(e) *Issuance.* (1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal and will give interested persons an opportunity to comment. The Regional Director will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected state, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Director will consult with the Council and the Director of the affected state fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (e)(2) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP.

(v) The applicant has failed to demonstrate a valid justification for the permit.

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the FEDERAL REGISTER describing the experimental fishing to be conducted under the EFP. The Regional Director may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.

(iii) The times and places where experimental fishing may be conducted.

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.

(v) The condition that observers be carried aboard vessels operating under an EFP.

(vi) Data reporting requirements.

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(f) *Duration*. Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

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

(h) *Transfer*. EFPs issued under subparts B through F of this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(i) *Inspection*. Any EFP issued under subparts B through F of this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(j) *Sanctions*. Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of subparts A through F of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904 subpart D. Other sanctions available under the statute will be applicable.

(k) *Protected species*. Persons fishing under an EFP must report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be

submitted to the Regional Director within 3 days of arriving in port.

Subpart C—Western Pacific Pelagic Fisheries

§ 660.21 Permits.

(a) A fishing vessel of the United States must be registered for use under a Hawaii longline limited access permit or a longline general permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean, Pacific pelagic management unit species that were harvested with longline gear.

(b) A fishing vessel of the United States must be registered for use under a Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around Hawaii; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around Hawaii, Pacific pelagic management unit species that were harvested with longline gear.

(c) A receiving vessel must be registered for use with a receiving vessel permit if that vessel is used to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species that were harvested with longline gear.

(d) Any required permit must be on board the vessel and available for inspection by an authorized agent, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(e) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(f) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(g) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 660.13.

(h) A limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) An application for a permit transfer will be submitted to the Pacific Area Office as described in § 660.13(c).

(i) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

(j) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(k) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Director the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Director, the appeal will be in writing, will state the action(s) appealed, and the reasons therefor, and will be submitted within 30 days of the action(s) by the FMD. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Director may request additional information. Upon receipt of sufficient information, the Regional Director will decide the appeal in accordance with the criteria set out in this part and in the Fishery Management Plans prepared by the Council, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (k)(3) of this section; and

such other considerations as deemed appropriate. The Regional Director will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Director determines that one is appropriate, the Regional Director may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Director.

(3) The Regional Director may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Director will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Director's action shall constitute final Agency action for the purposes of the APA.

(4) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Director for good cause, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefor.

§ 660.22 Prohibitions.

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:

(a) Fish for Pacific pelagic management unit species using gear prohibited under § 660.30 or not permitted by an EFP issued under § 660.17.

(b) Falsify or fail to make and/or file all reports of Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in § 660.3, provided that the person is required to do so by applicable state law or regulation.

(c) Use a longline vessel without a valid longline general permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(d) Use a longline fishing vessel without a valid Hawaii longline limited access permit registered for use with that vessel to fish for Pacific pelagic management unit species in the EEZ around Hawaii.

(e) Use a receiving vessel without a valid receiving vessel permit registered for use with that vessel to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species harvested with longline gear.

(f) Transfer a permit in violation of § 660.21(h).

(g) Fish for Pacific pelagic management unit species with longline gear within the protected species zone in the NWHI.

(h) Fail to notify the NMFS Southwest Enforcement Office of intent to enter or depart the protected species zone, as required under § 660.23(b).

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.17.

(j) Fail to comply with notification requirements set forth in § 660.23 or in any EFP issued under § 660.17.

(k) Fail to comply with a term or condition governing the observer program established in § 660.28.

(l) Fail to comply with other terms and conditions that the Regional Director imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(m) Fish in the fishery after failing to comply with the notification requirements in § 660.23.

(n) Use a U.S. vessel that has longline gear on board and that does

not have a valid Hawaii longline limited access permit registered for use with that vessel or a valid longline general permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(o) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

(p) Enter the EEZ around Hawaii with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel.

(q) Enter the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel or a longline general permit registered for use with that vessel.

(r) Fail to carry a VMS unit as required under § 660.25.

(s) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC.

(t) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(u) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

(v) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel.

(w) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(x) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(y) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

(z) Fish with a vessel registered for use under a Hawaii longline limited access permit using longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(aa) Land or transship shoreward of the outer boundary of the EEZ around Hawaii Pacific pelagic management unit species that were harvested with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(bb) Use a receiving vessel registered for use under a receiving vessel permit described in § 660.21(c) to receive from another vessel Pacific pelagic management unit species harvested with longline gear, if the fish were harvested or the transfer occurs within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(cc) Fail to carry line clippers meeting the minimum design standards as specified in § 660.32(a)(1), and a dip net as required under § 660.32(a)(2), on board a vessel registered for use under a Hawaii longline limited access permit.

(dd) Fail to comply with the sea turtle handling, resuscitation, and release requirements specified in § 660.32(b) through (d), when operating a vessel registered for use under a Hawaii longline limited access permit.

[61 FR 34572, July 2, 1996, as amended at 65 FR 16347, Mar. 28, 2000]

EFFECTIVE DATE NOTE: At 64 FR 72291, Dec. 27, 1999, § 660.22 was amended by adding paragraphs (z), (aa), and (bb), effective Dec. 23, 1999, through June 26, 2000. At 65 FR 37917, June 19, 2000, the effective date was extended through Dec. 23, 2000. At 65 FR 51994, Aug. 25, 2000, paragraphs (z), (aa), and (bb) were suspended and paragraphs (ee) through (jj) were added, effective Aug. 25, 2000, through Feb. 21, 2001. For the convenience of the user, the added text follows:

§ 660.22 Prohibitions.

* * * * *

(ee) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit using longline gear within the Hawaii emergency closed areas in violation of § 660.33(b)(1), (c)(1), (c)(4), (c)(5), or (d)(1).

(ff) Use a receiving vessel registered for use under a receiving vessel permit to receive from another vessel Pacific pelagic management unit species harvested with longline gear, if the fish were harvested or the transfer occurs within the Hawaii emergency closed areas in violation of § 660.33(b)(2), (c)(2), or (d)(2).

(gg) Land or transship shoreward of the outer boundary of the EEZ around Hawaii Pacific pelagic management species that were harvested with longline gear within the Hawaii emergency closed areas in violation of § 660.33(b)(3), (c)(3), or (d)(3).

(hh) Use light sticks within the Hawaii emergency longline closed Area C in violation of § 660.33(d)(4).

(ii) Land or sell swordfish (Xiphias gladius) caught by longline gear within the Hawaii emergency longline closed Area C in violation of § 660.33(d)(5).

(jj) Use longline gear to fish for Pacific pelagic management unit species in Hawaii emergency longline closed Area B or Area C without a NMFS-approved observer aboard the vessel in violation of § 660.33(e)(1) or (e)(2).

§ 660.23 Notifications.

(a) The permit holder for a fishing vessel subject to the requirements of this subpart, or an agent designated by the permit holder, shall provide a notice to the Regional Director at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around Hawaii. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Director is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Director. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

(b) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 660.12, must notify the NMFS Southwest Enforcement Office (see part 600 for address of Regional Director) immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

EFFECTIVE DATE NOTE: At 65 FR 51994, Aug. 25, 2000, § 660.23 was amended by suspending paragraph (a) and adding paragraph (c), effective Aug. 25, 2000, through Feb. 21, 2001. For the convenience of the user, the added text follows:

§ 660.23 Notifications.

* * * * *

(c) The permit holder of a vessel registered for use with a Hawaii longline limited access permit or with an agent designated by the permit holder shall provide notice to the Regional Administrator at least 72 hours (not including weekends and holidays) before the vessel leaves port on a fishing trip, any part of which occurs in Area B or Area C, as described in § 660.33(a)(2) or (a)(3). The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of and telephone number of the agent designated by the permit holder to be available between 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS

to contact in order to arrange observer placement.

§ 660.24 Gear identification.

(a) *Identification.* The operator of each permitted vessel in the fishery management area must ensure that the official number of the vessel be affixed to every longline buoy and float, including each buoy and float that is attached to a radar reflector, radio antenna, or flag marker, whether attached to a deployed longline or possessed on board the vessel. Markings must be legible and permanent, and must be of a color that contrasts with the background material.

(b) *Enforcement action.* Longline gear not marked in compliance with paragraph (a) of this section and found deployed in the EEZ will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§ 660.25 Vessel monitoring system.

(a) *VMS unit.* Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(b) *Notification.* After a Hawaii longline limited access permit holder has been notified by the SAC of a specific date for installation of a VMS unit in the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(c) *Fees and charges.* During the experimental VMS program, a Hawaii longline limited access permit holder shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(d) *Permit holder duties.* The holder of a Hawaii longline limited access permit and the master of the vessel operating under the permit must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry the VMS unit on board whenever the vessel is at sea.

(3) Not remove or relocate the VMS unit without prior approval from the SAC.

(e) *Authorization by the SAC.* The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

§ 660.26 Longline fishing prohibited area management.

(a) *Prohibited areas.* Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in paragraphs (b), (c), and (d) of this section.

(b) *Longline protected species zone.* The protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 660.12.

(c) *Main Hawaiian Islands.* (1) From February 1 through September 30 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	DW. long.
A	18°05′	155°40′
B	18°20′	156°25′
C	20°00′	157°30′
D	20°40′	161°40′
E	21°40′	161°55′
F	23°00′	161°30′
G	23°05′	159°30′
H	22°55′	157°30′
I	21°30′	155°30′
J	19°50′	153°50′
K	19°00′	154°05′
A	18°05′	155°40′

(2) From October 1 through the following January 31 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
L	18°25′	155°40′
M	19°00′	154°45′
N	19°15′	154°25′
O	19°40′	154°20′
P	20°20′	154°55′
Q	20°35′	155°30′
R	21°00′	155°35′
S	22°30′	157°35′
T	22°40′	159°35′
U	22°25′	160°20′
V	21°55′	160°55′
W	21°40′	161°00′
E	21°40′	161°55′
D	20°40′	161°40′
C	20°00′	157°30′
B	18°20′	156°25′
A	18°05′	155°40′

(d) *Guam.* The longline fishing prohibited area around Guam is the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°25′	144°00′
B	14°00′	143°38′
C	13°41′	144°33′30″
D	13°00′	143°25′30″
E	12°20′	143°37′
F	11°40′	144°09′
G	12°00′	145°00′
H	13°00′	145°42′
I	13°27′	145°51′

§ 660.27 Exemptions for longline fishing prohibited areas; procedures.

(a) An exemption permitting a person to use longline gear to fish in a portion(s) of the Hawaii longline fishing prohibited area will be issued to a person who can document that he or she:

(1) Currently owns a Hawaii longline limited access permit issued under this part and registered for use with his or her vessel.

(2) Before 1970, was the owner or operator of a vessel when that vessel landed Pacific pelagic management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area.

(3) Was the owner or operator of a vessel that landed Pacific pelagic management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area, in at least 5 calendar years after 1969, which need not be consecutive.

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught Pacific pelagic management unit species in an area that is now in the Hawaii longline fishing prohibited area.

(b) Each exemption shall specify the portion(s) of the Hawaii longline fishing prohibited area, bounded by longitudinal and latitudinal lines drawn to include each statistical area, as appearing on Hawaii State Commercial Fisheries Charts, in which the exemption holder made the harvest documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the Hawaii longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption under this section must submit an application and supporting documentation to the Pacific Area Office at least 15 days before the desired effective date of the exemption.

(e) If the Regional Director determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional Director may prohibit all longline fishing in the Hawaii longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

(f) The Council will consider information provided by persons with Hawaii longline limited access permits issued under this part who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a) of this section to permit additional exemptions.

(1) If additional exemptions are needed, the Council will advise the Regional Director in writing of its recommendation, including criteria by

which financial hardships will be mitigated, while retaining the effectiveness of the longline fishing prohibited area.

(2) Following a review of the Council's recommendation and supporting rationale, the Regional Director may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Director to the Council for the rejection; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the Pelagics FMP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

§ 660.28 Conditions for at-sea observer coverage.

(a) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip for which NMFS received timely notice in compliance with these regulations.

(b) The ''Notice Prior to Fishing Trip'' requirements in this subpart commit the permit holder to the representations in the notice. The notice can be modified by the permit holder or designated agent because of changed circumstance, if the Regional Director is promptly provided a modification to the notice that complies with the notice requirements. The notice will also be considered modified if the Regional Director and the permit holder or designated agent agree to placement changes.

(c) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart, or as a condition of an EFP issued under § 660.17, the vessel may not engage in the fishery without taking the observer.

(d) A NMFS observer shall arrive at the observer's assigned vessel 30 minutes before the time designated for departure in the notice or the notice as modified, and will wait 1 hour for departure.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Director's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or sea bird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Director imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Director.

(i) Reimbursement requirements are as follows:

(1) Upon observer verification of vessel accommodations and the number of assigned days on board, NMFS will reimburse vessel owners a reasonable amount for observer subsistence as determined by the Regional Director.

(2) If requested and properly documented, NMFS will reimburse the vessel owner for the following:

(i) Communications charges incurred by the observer.

(ii) Lost fishing time arising from a seriously injured or seriously ill observer, provided that notification of the nature of the emergency is transmitted to the Fisheries Observer Branch, Southwest Region, NMFS (see address for Southwest Regional Director) at the earliest practical time. NMFS will reimburse the owner only for those days during which the vessel is unable to fish as a direct result of helping the NMFS employee who is seriously injured or seriously ill. Lost fishing time is based on time travelling to and from the fishing grounds and any documented out-of-pocket expenses for medical services. Payment will be based on the current target fish market prices and that vessel's average target fish catch retained per day at sea for the previous 2 years, but shall not exceed $5,000 per day or $20,000 per claim. Detailed billing with receipts and supporting records are required for allowable communication and lost fishing time claims. The claim must be completed in ink, showing the claimant's printed name, address, vessel name, observer name, trip dates, days observer on board, an explanation of the charges, and claimant's dated signature with a statement verifying the claim to be true and correct. Requested reimbursement claims must be submitted to the Fisheries Observer Branch, Southwest Region, NMFS. NMFS will not process reimbursement invoices and documentation submitted more than 120 days after the occurrence.

(j) If a vessel normally has cabins for crew members, female observers on a vessel with an all-male crew must be accommodated either in a single person cabin or, if NMFS concludes that adequate privacy can be ensured by installing a curtain or other temporary divider, in a two-person shared cabin. If the vessel normally does not have cabins for crew members, alternative accommodations must be approved by NMFS. If a cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, or if no cabin is assigned, then arrangements for sharing common facilities must be established and approved in advance by NMFS.

EFFECTIVE DATE NOTE: At 65 FR 51994, Aug. 25, 2000, § 660.28 was amended by suspending paragraph (c), effective Aug. 25, 2000, through Feb. 21, 2001.

§ 660.29 Port privileges and transiting for unpermitted U.S. longline vessels.

A U.S. longline fishing vessel that does not have a permit under subpart B of this part may enter waters of the fishery management area with Pacific pelagic management unit species on board, but may not land or transship any management unit species on board the vessel. The vessel's longline gear must be stowed or secured so it is rendered unusable during the time the vessel is in those waters.

§ 660.30 Prohibition of drift gillnetting.

Fishing with drift gillnets in the fishery management area is prohibited, except where authorized by an EFP issued under § 660.17.

§ 660.31 Framework adjustments to management measures.

(a) *Introduction.* Adjustments in management measures may be made through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the fishery. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Pelagics Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics

FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, the Council will publicize, including by FEDERAL REGISTER notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a FEDERAL REGISTER notice summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

§ 660.32 Sea turtle take mitigation measures.

(a) *Possession and use of required mitigation gear.* Line clippers meeting minimum design standards as specified in paragraph (a)(1) of this section and dip nets meeting minimum standards prescribed in paragraph (a)(2) of this section must be carried aboard vessels registered for use under a Hawaii longline limited access permit and must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(1) *Line clippers.* Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (figure 1). The minimum design standards are as follows:

(i) *A protected cutting blade.* The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) *Cutting blade edge.* The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) *An extended reach holder for the cutting blade.* The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) *Secure fastener.* The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(2) *Dip nets.* Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section nets are:

(i) *An extended reach handle.* The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(ii) *Size of dip net.* The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm 7.62 cm).

(b) *Handling requirements.* (1) All incidentally taken sea turtles brought aboard for dehooking and/or

disentanglement must be handled in a manner to minimize injury and promote post-hooking survival.

(2) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in paragraphs (c) and (d) of this section.

(3) If a sea turtle is too large or hooked in such a manner as to preclude safe boarding without causing further damage/injury to the turtle, line clippers described in paragraph (a)(1) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(c) *Resuscitation*. If the sea turtle brought aboard appears dead or comatose, the sea turtle must be placed on its belly (on the bottom shell or plastron) so that the turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. A reflex test, performed by gently touching the eye and pinching the tail of a sea turtle, must be administered by a vessel operator, at least every 3 hours, to determine if the sea turtle is responsive. Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance may be placed into a container holding water. A water-soaked towel placed over the eyes, carapace, and flippers is the most effective method in keeping a turtle moist. Those that revive and become active must be returned to the sea in the manner described in paragraph (d) of this section. Sea turtles that fail to revive within the 24–hour period must also be returned to the sea in the manner described in paragraph (d)(1) of this section.

(d) *Release*. Live turtles must be returned to the sea after handling in accordance with the requirements of paragraphs (b) and (c) of this section:

(1) By putting the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and releasing the turtle away from deployed gear; and

(2) Observing that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

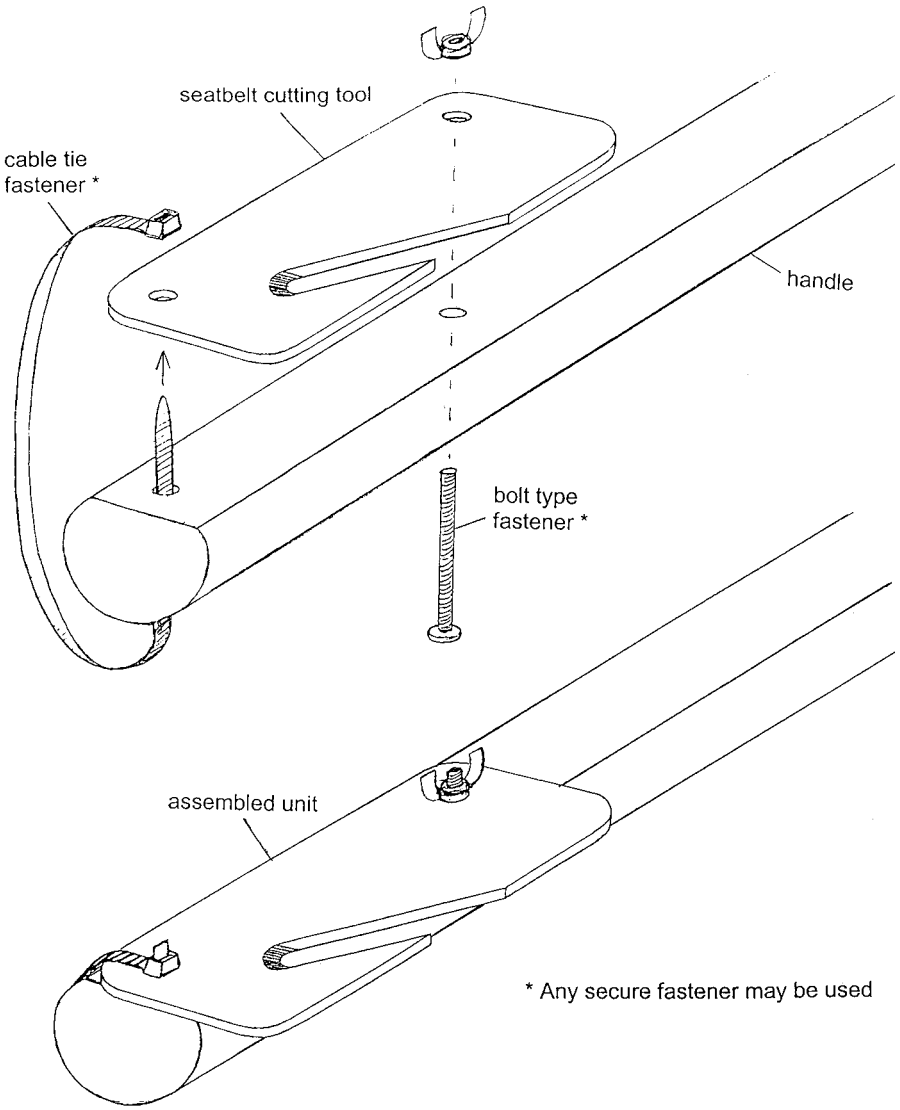


Figure 1 – Sample Fabricated Arceneaux Line Clipper

[65 FR 16347, Mar. 28, 2000]

EFFECTIVE DATE NOTE: At 65 FR 51995, Aug. 25, 2000, § 660.33 was added, effective Aug. 25, 2000, through Feb. 21, 2001. For the convenience of the user, the added text follows:

§ 660.33 Hawaii emergency closure.

(a) *Longline fishing restricted areas.* (1) Area ''A'' as used in this section, is defined as all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 150° W. long., and on the west by 168° W. long. (see Figure 2 to this section).

(2) ''Area B''as used in this section, is defined as all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 137° W. long., and on the west by 150° W. long; and all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 168° W. long., and on the west by 173° E. long. (see Figure 2 to this section).

(3) ''Area C'', as used in this section, is defined as all waters bounded on the south by 0° latitude, on the north by 28° N. lat., on the east by 137° W. long., and on the west by 173° E. long. (see Figure 2 to this section to this section).

(b) *Longline fishing restrictions in Area A.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area A.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area A.

(3) A vessel registered for use under a Hawaii longline limited access permit or receiving vessel permit may not land or transship Pacific pelagic management unit species that were harvested with longline gear in Area A shoreward of the outer boundary of the EEZ surrounding Hawaii.

(c) *Longline fishing restrictions in Area B.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area B from March 15 through May 31.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area B from March 15 through May 31.

(3) A vessel registered for use under a Hawaii longline limited access permit or receiving vessel permit may not land or transship Pacific pelagic management unit species that were harvested with longline gear in Area B shoreward of the outer boundary of the EEZ surrounding Hawaii.

(4) From August 7 through December 31, 2000, the number of longline sets allowed in Area B is limited to a total of 154 sets.

(5) From January 1 through March 14, 2001, the number of longline sets allowed in Area B is limited to 77 sets.

(6) Between August 7 through December 31, 2000, the Regional Administrator shall prohibit the use of longline gear to fish for Pacific pelagic management unit species on the date and time that an estimated 154 longline sets will have been made in Area B.

(7) Between January 1 through March 14, 2001, the Regional Administrator shall prohibit the use of longline gear to fish for Pacific pelagic management unit species on the date and time that an estimated 77 longline sets will have been made in Area B.

(8) The Regional Administrator shall determine on the basis of available data when the maximum number of sets will be reached in Area B.

(9) The Regional Administrator will notify each permit holder and each operator of vessels fishing in Area B when further use of longline gear to fish for Pacific pelagic management unit species in Area B is prohibited.

(10) At least 24 hours advance notice will be given of the effective date and time after which the use of longline gear to fish for Pacific pelagic management unit species in Area B is prohibited, as prescribed in paragraph (c)(9) of this section.

(d) *Longline fishing restrictions in Area C.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area C from March 15 through May 31.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area C from March 15 through May 31.

(3) Landing or transshipping Pacific pelagic management unit species, that were harvested with longline gear in Area C from March 15 through May 31, shoreward of the outer boundary of the EEZ surrounding Hawaii is prohibited.

(4) A vessel registered for use under a Hawaii longline limited access permit may not use lightsticks in Area C.

(5) Within 30 days of each landing of swordfish caught by longline gear in Area C, the permit holder or operator of a vessel registered for use under a Hawaii longline limited access permit must donate to charity at least 20 percent of the total proceeds from the sale of such swordfish.

(6) For the purpose of this section, ''charity'' means an entity to which a taxpayer can contribute and deduct the value of any such contribution from taxable income as a ''charitable contribution'' as defined by the Internal Revenue Code at 26 U.S.C. 170(c).

(e) *Emergency closure at-sea observer coverage.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area B without a NMFS-approved observer aboard the vessel.

(2) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear in Area C without a NMFS-approved observer aboard the vessel, unless it is issued a written exemption on a per trip basis by the Regional Administrator.

(3) The Regional Administrator may assign NMFS-approved observers to vessels registered for use under Hawaii longline permits:

(i) Based on notice provided by the permit holder or by an agent designated by the permit holder to the Regional Administrator according under §660.23(c); or

(ii) According to a list containing vessel names randomly ordered by the Regional Administrator.

(4) When NMFS notifies the permit holder or the designated agent of the obligation to carry an observer as required under this section, the vessel may not engage in the fishery without taking the observer.

(5) An operator of a vessel registered for use under a Hawaii longline limited access permit must immediately terminate longline fishing in Area C while at sea upon notification by the Regional Administrator that the level of observer coverage is below the 10 percent or 20 percent level of observer coverage established by NMFS.

(6) An operator of a vessel registered for use under a Hawaii longline limited access permit that has been notified by the Regional Administrator as described in paragraph (e)(5) of this section is prohibited from using longline gear in Area C for the remainder of the trip, unless notified by the Regional Administrator that the prohibition has been removed for the vessel.

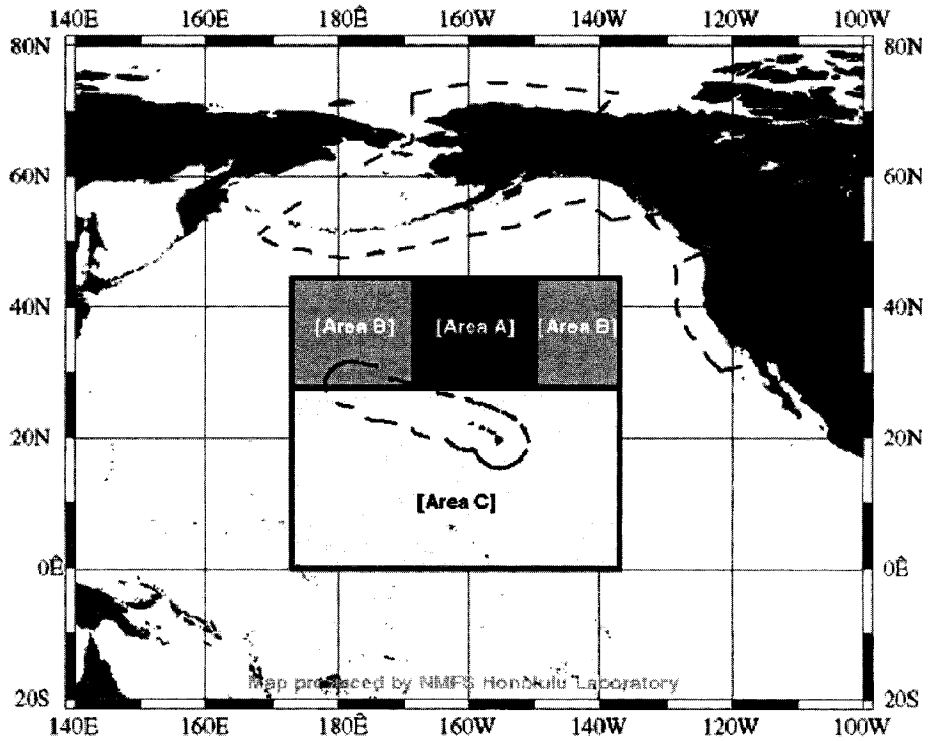


FIGURE 2 TO § 660.33—LONGLINE FISHING RESTRICTED AREAS

Subpart D—Western Pacific Crustacean Fisheries

§ 660.41 Permits.

(a) *Applicability*. (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel. Only one permit will be assigned to any vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 or Permit Area 3, must have a permit issued for such a vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

(4) A limited access permit is valid for fishing only in Permit Area 1.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 660.13.

(c) *Application.* An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from the Pacific Area Office and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) *Number of permits.* A maximum of 15 limited access permits can be valid at any time.

(e) *Transfer or sale of limited access permits.* (1) Permits may be transferred

or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, the Pacific Area Office must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 660.13. The transferred permit is not valid until this process is completed.

(f) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

(g) *Issuance of limited access permits to future applicants.*

(1) The Regional Director may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Director has determined that limited access permits may be issued to new persons, a notice shall be placed in the FEDERAL REGISTER, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the FEDERAL REGISTER notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Director through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Director shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50-percent share in the vessel that the permit would cover.

§ 660.42 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.16, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 660.41;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 660.48;

(iii) From closed areas for lobsters, as specified in § 660.46;

(iv) During a closed season, as specified in § 660.45; or

(v) After the closure date, as specified in § 660.50, and until the fishery opens again in the following calendar year.

(vi) In a lobster grounds after closure of that grounds as specified in § 660.50(b).

(2) Fail to report before landing or offloading as specified in § 660.43.

(3) Fail to comply with any protective measures implemented under § 660.51 or § 660.52.

(4) Leave a trap unattended in the Management Area except as provided in § 660.48.

(5) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 660.48.

(6) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 660.50, until the fishery opens again the following year.

(7) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Director for inspection and copying any records that must be made available in accordance with § 660.14(f)(2).

(8) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustaceans Permit Area 1 when fishing for lobster is prohibited as specified in §§ 660.45(a), 660.50, 660.51, or 660.52, except as allowed under § 660.48(a)(7).

(9) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustaceans Permit Area 1 VMS Subarea when fishing for lobsters is prohibited as specified in §§ 660.45(a), 660.50, 660.51, and 660.52, except as allowed under § 660.48(a)(8).

(10) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same while engaged in the Permit Area 1 fishery; or to move or remove a VMS unit while engaged in the Permit Area 1 fishery without first notifying the Regional Administrator.

(11) Make a false statement, oral or written, to the Regional Administrator or an authorized officer, regarding the certification, use, operation, or maintenance of a VMS unit used in the fishery.

(12) Fail to allow an authorized officer to inspect and certify a VMS unit used in the fishery.

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 660.50(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 660.48; or

(ii) During a closed season, as specified in § 660.45(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 that is less than the minimum size specified in § 660.44.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 660.44.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 660.44.

(5) Possess on a fishing vessel that has a permit for Permit Area 2 issued under this subpart any lobster trap in Permit Area 2 when fishing for lobster in the main Hawaiian Islands is prohibited during the months of May, June, July, and August.

[61 FR 34572, July 2, 1996, as amended at 62 FR 35449, July 1, 1997; 63 FR 20540, Apr. 27, 1998; 64 FR 36822, July 8, 1999]

§ 660.43 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing,

the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Director will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 660.44 Lobster size and condition restrictions—Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 3 of this subpart).

(b) Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

(c) A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

§ 660.45 Closed seasons.

(a) Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

(b) Lobster fishing is prohibited in Permit Area 2 during the months of May, June, July, and August.

[61 FR 34572, July 2, 1996, as amended at 63 FR 20540, Apr. 27, 1998]

EFFECTIVE DATE NOTE: At 65 FR 39318, June 26, 2000, § 660.45 was amended by suspending paragraph (a) and adding paragraph (c), effective July 1, 2000, through Dec. 31, 2000. For the convenience of the user, the added text follows:

§ 660.45 Closed seasons.

* * * * *

(c) Lobster fishing is prohibited in Permit Area 1 from July 1, 2000, through December 31, 2000.

§ 660.46 Closed areas.

All lobster fishing is prohibited:

(a) Within 20 nm of Laysan Island.

(b) Within the EEZ landward of the 10-fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 660.47 Gear identification.

In Permit Area 1, the vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§ 660.48 Gear restrictions.

(a) *Permit Area 1.* (1) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(2) The smallest opening of an entry way of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches (16.5 cm) in diameter to pass from outside the trap to inside the trap.

(3) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(i) Panels must have at least four unobstructed circular holes no smaller than 67 mm in diameter, with centers at least 82 mm apart.

(ii) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(iii) Panels must be placed opposite one another in each trap.

(4) A vessel fishing for or in possession of lobster in any permit area may not have on board the vessel any trap that does not meet the requirements of paragraphs (a)(1), (2), and (3) of this section.

(5) A maximum of 1,200 traps per vessel may be maintained on board or in the water, provided that no more than 1,100 assembled traps are maintained on board or in the water. If more than 1,100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(6) Traps shall not be left unattended in any permit area, except in the event of an emergency, in which case the vessel operator must notify the NMFS Law Enforcement Office of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port.

(7) A vessel whose owner has a limited access permit issued under this subpart and has an operating VMS unit

certified by the NMFS may enter Crustaceans Permit Area 1 with lobster traps on board on or after June 25, but must remain outside the Crustaceans Permit Area 1 VMS Subarea until the NWHI lobster season opens on July 1.

(8) A vessel whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS may transit Crustaceans Permit Area 1, including Crustaceans Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 660.50, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

(9) The operator of a permitted vessel must notify the Regional Administrator or an authorized officer no later than June 15 of each year if the vessel will use a VMS unit in the fishery and allow for inspection and certification of the unit.

(b) *Permit Area 2.* Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

[61 FR 34572, July 2, 1996, as amended at 62 FR 35450, July 1, 1997; 63 FR 20540, Apr. 27, 1998; 64 FR 36822, July 8, 1999]

EFFECTIVE DATE NOTE: At 65 FR 39318, June 26, 2000, § 660.48 was amended by suspending paragraph (a)(9), effective July 1, 2000, through Dec. 31, 2000.

§ 660.49 At-sea observer coverage.

All fishing vessels subject to this subpart and subpart B of this part must carry an observer when requested to do so by the Regional Director.

§ 660.50 Harvest limitation program.

(a) *General.* Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) *Harvest guideline.* (1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FMP after consultation with the Council.

(2) NMFS shall publish a document indicating the annual harvest guideline in the FEDERAL REGISTER by February 28 of each year and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 660.48(a)(8).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the overall harvest guideline for Crustaceans Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustaceans Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

(c) *Monitoring and adjustment.* The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Director shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

[61 FR 34572, July 2, 1996, as amended at 62 FR 35450, July 1, 1997; 63 FR 20541, Apr. 27, 1998; 64 FR 36822, July 8, 1999]

EFFECTIVE DATE NOTE: At 65 FR 39318, June 26, 2000, § 660.50 was suspended, effective July 1, 2000, through Dec. 31, 2000.

§ 660.51 Monk seal protective measures.

(a) *General.* This section establishes a procedure that will be followed if the Regional Director receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Director will notify all interested parties of the facts known about the incident. The Regional Director will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* (1) The Regional Director will investigate the incident reported and will attempt to:

(i) Verify that the incident occurred.

(ii) Determine the extent of the harm to the monk seal population.

(iii) Determine the probability of a similar incident recurring.

(iv) Determine details of the incident such as:

(A) The number of animals involved.

(B) The cause of the mortality.

(C) The age and sex of the dead animal(s).

(D) The relationship of the incident to the reproductive cycle, for example, breeding season (March-September), non-breeding season (October- February).

(E) The population estimates or counts of animals at the island where the incident occurred.

(F) Any other relevant information.

(v) Discover and evaluate any extenuating circumstances.

(vi) Evaluate any other relevant factors.

(2) The Regional Director will make the results of the investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Director will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Director will:

(1) Advise the interested parties of his or her conclusion and the facts upon which it is based.

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions for appropriate protective measures.

(e) *Determination of response.* The Regional Director will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) *Action by the Regional Director.* If the Regional Director decides that protective measures are necessary and appropriate, the Regional Director will prepare a document that describes the incident, the protective measures proposed, and the reasons for the protective measures; provide it to the interested parties; and request their comments.

(g) *Implementation of protective measures.* (1) If, after completing the steps described in paragraph (f) of this section, the Regional Director concludes that protective measures are necessary and appropriate, the Regional Director will recommend the protective measures to the Assistant Administrator and provide notice of this recommendation to the Chairman of the Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Assistant Administrator concurs with the Regional Director's

recommendation, NMFS will publish an action in the FEDERAL REGISTER that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) *Notification of ''no action.''* If, at any point in the process described in this section, the Regional Director or Assistant Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the FEDERAL REGISTER.

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the Crustaceans FMP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the ESA;

(iii) Until the Assistant Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the FEDERAL REGISTER notification, not to exceed 3 months. The measures may be renewed for 3 months after again following procedures in paragraphs (b) through (g) of this section.

(j) *Repeal.* (1) If the Assistant Administrator decides that protective measures may no longer be necessary for the protection of monk seals, the interested parties will be notified of this preliminary decision and the facts upon which it is based. The Assistant Administrator will request advice on the proposed repeal of the protective measures.

(2) The Assistant Administrator will consider all relevant information obtained by the Regional Director or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Assistant Administrator decides to repeal the protective measures—

(i) Interested parties will be notified of the decision; and

(ii) Notification of repeal and the reasons for the repeal will be published in the FEDERAL REGISTER.

§ 660.52 Monk seal emergency protective measures.

(a) *Determination of emergency.* If, at any time during the process described in § 660.51, the Regional Director determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, the Regional Director will—

(1) Notify the interested parties of this determination and request their immediate advice and comments.

(2) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Assistant Administrator.

(b) *Implementation of emergency measures.* If the Assistant Administrator agrees with the recommendation for emergency action—

(1) The Regional Director will determine the appropriate emergency protective measures.

(2) NMFS will publish the emergency protective measures in the FEDERAL REGISTER.

(3) The Regional Director will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Director knows are on the fishing grounds also will be notified by radio.

(c) *Effective dates.* (1) Emergency protective measures are effective against a permit holder at 12:01 a.m., local time, of the day following the day the permit holder receives actual notice of the measures.

(2) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(3) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 660.51.

§ 660.53 Framework procedures.

(a) *Introduction*. New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report*. By June 30 of each year, the Council-appointed Crustaceans Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures*. (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for New Measures*. (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council will publicize, including by a FEDERAL REGISTER document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a FEDERAL REGISTER document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

§ 660.54 Five-year review.

The Council, in cooperation with NMFS, will conduct a review of the effectiveness and impacts of the NWHI management program, including biological, economic, and social aspects of the fishery, by July 1, 2001.

Subpart E—Bottomfish and Seamount Groundfish Fisheries

§ 660.61 Permits.

(a) *Applicability*. (1) The owner of any vessel used to fish for bottomfish management unit species in the Northwestern Hawaiian Islands Subarea must have a permit issued under this section and the permit must be registered for use with the vessel.

(2) The PIAO will not register a single vessel for use with a Ho'omalu Zone permit and a Mau Zone permit at the same time.

(3) Mau Zone permits issued before June 14, 1999 become invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (i) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(b) *Submission*. (1) An application for a permit required under this section must be submitted to the PIAO as described in § 660.13. (2) *Ho'omalu Zone limited access permit*. In addition to an application under § 660.13(c), each applicant for a Ho'omalu Zone permit must

also submit a supplementary information sheet provided by the PIAO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) A copy of landings receipts or other documentation, with a certification from a state or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentages of ownership of the partnership or corporation.

(3) *Mau Zone limited access permit*. The PIAO will not accept applications for a new Mau Zone permit after June 14, 1999. In addition to an application under § 660.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by the PIAO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) Copy of State of Hawaii catch report(s) to demonstrate that the permitted vessel had made qualifying landings of bottomfish from the Mau Zone; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentage of ownership of the partnership or corporation.

(c) *Sale or transfer of Ho'omalu limited access permits to new vessel owners*. (1) A Ho'omalu zone permit may not be sold or otherwise transferred to a new owner.

(2) A Ho'omalu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Administrator.

(d) *Transfer of Ho'omalu Zone limited access permits to replacement vessels*. (1) Upon application by the owner of a permitted vessel, the Regional Administrator will transfer that owner's permit to a replacement vessel owned by that owner, provided that the replacement vessel does not exceed 60 ft (18.3 m) in length. The replacement vessel must be put into service no later than 12 months after the owner applies for the transfer, or the transfer shall be void.

(2) An owner of a permitted vessel may apply to the Regional Administrator for transfer of that owner's permit to a replacement vessel greater than 60 ft (18.3 m) in length. The Regional Administrator may transfer the permit upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, or has catching power that does not exceed that of the original vessel, and that the transfer is not inconsistent with the objectives of the program. The Regional Administrator shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) *Ho'omalu Zone limited access permit renewal*. (1) A qualifying landing for Ho'omalu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of bottomfish management unit species from the Ho'omalu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho'omalu Zone, of which at least 50 percent by weight was bottomfish management unit species. A permit is eligible for renewal for the next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Administrator for waiver of the landing requirement. If the Regional Administrator finds that failure to make three

landings was due to circumstances beyond the owner's control, the Regional Administrator may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) *Issuance of new Ho'omalu Zone limited access permits.* The Regional Administrator may issue new Ho'omalu Zone limited access permits under § 660.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort.

(g) *Eligibility for new Ho'omalu Zone limited access permits.* When the Regional Administrator has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) *Point system.* (i) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more of any of the following types of landings in the NWHI:

(A) Any amount of bottomfish management unit species, regardless of weight, if made on or before August 7, 1985;

(B) At least 2,500 lb (1,134 kg) of bottomfish management unit species, if made after August 7, 1985; or

(C) At least 2,500 lb (1,134 kg) of any fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands.

(iii) For any one year, points will be assigned under either paragraph (g)(1)(i) or (g)(1)(ii) of this section, but not under both paragraphs.

(iv) Before the Regional Administrator issues an Ho'omalu zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) *Restrictions.* An applicant must own at least a 25–percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) *Order of issuance.* New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Administrator through a lottery.

(4) *Notification.* The Regional Administrator shall place a notice in the *Federal Register* and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) *Eligibility for new Mau Zone limited access permits.* (1) The PIAO will issue an initial Mau Zone permit to a vessel owner who qualifies for at least three points under the following point system:

(i) An owner who held a Mau Zone permit on or before December 17, 1991, and whose permitted vessel made at least one qualifying landing of bottomfish management unit species on or before December 17, 1991, shall be assigned 1.5 points.

(ii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1991, shall be assigned 0.5 point.

(iii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1992, shall be assigned 1.0 point.

(iv) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1993, shall be assigned 1.5 points.

(v) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1994, shall be assigned 2.0 points.

(vi) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1995, shall be assigned 2.5 points.

(vii) An owner whose permitted vessel made at least one qualifying landing of bottomfish management unit species during 1996, shall be assigned 3.0 points.

(viii) Before the PIAO issues a Mau Zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) For purposes of this paragraph § 660.61(h), a ''qualifying landing'' means any amount of bottomfish management unit species lawfully harvested from the Mau Zone and offloaded for sale. No points shall be assigned to an owner for any qualifying landings reported to the State of Hawaii more than 1 year after the landing.

(3) More than one Mau Zone permit may be issued to an owner of two or more vessels, provided each of the owner's vessels for which a permit will be registered for use has made the required qualifying landings for the owner to be assigned at least three eligibility points.

(4) A Mau Zone permit holder who does not own a vessel at the time initial permits are issued must register the permit for use with a vessel owned by the permit holder within 12 months from the date the permit was issued. In the interim, the permit holder may register the permit for use with a leased or chartered vessel. If within 12 months of initial permit issuance, the permit holder fails to apply to the PIAO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(5) For each of paragraphs (h)(1)(i) through (h)(1)(viii) of this section, the PIAO shall assign points based on the landings of one permitted vessel to only one owner if the vessel did not have multiple owners during the time frame covered by the subordinate paragraphs. If a vessel had multiple owners during a time frame covered by any of paragraphs (h)(1)(i) through (h)(1)(viii) of this section (including joint owners, partners, or shareholders of a corporate owner), the PIAO will assign the points for that subordinate paragraph to a single owner if only one owner submits an application with respect to the landings of that vessel during that time frame. If multiple owners submit separate applications with respect to the same landings of the same vessel during the same time frame, then the PIAO shall:

(i) Adhere to any written agreement between the applicants with respect to who among them shall be assigned the aggregate point(s) generated by landings during such time frame(s), or

(ii) If there is no agreement:

(A) Shall issue the applicants a joint permit provided the vessel's landings during such time frames generated at least three points, or

(B) In the event the vessel's landings during such time frame(s) generated less than three points, shall not assign any points generated by the vessel's landings during such time frame(s).

(i) *Ownership requirements and registration of Mau Zone limited access permits for use with other vessels.* (1) A Mau Zone permit may be held by an individual, partnership, or corporation. No more than 49 percent of the underlying ownership interest in a Mau Zone permit may be sold, leased, chartered, or otherwise transferred to another person or entity. If more than 49 percent of the underlying ownership of the permit passes to persons or entities other than those listed in the original permit application supplemental information sheet, then the permit expires and must be surrendered to the PIAO.

(2) A Mau Zone permit holder may apply under § 660.13 to the PIAO to register the permit for use with another vessel if that vessel is owned by the permit holder, and is no longer than 60 ft (18.3 m).

(3) If a Mau Zone permit holder sells the vessel, for which the permit is registered for use, the permit holder must within 12 months of the date of sale apply to the PIAO to register the permit for use with a vessel owned by the permit holder. If the permit holder has not applied to register a replacement vessel within 12 months, then the permit expires.

(4) If a permitted vessel owned by the permit holder is sold or becomes unseaworthy, the Mau Zone permit with which the vessel was registered may be registered for use with a leased or chartered vessel for a period not to exceed 12 months from the date of registration of the leased or chartered vessel. If by the end of that 12-month period the permit holder fails to apply to

the PIAO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(j) *Mau Zone limited access permit renewal.* (1) A Mau Zone permit will be eligible for renewal if the vessel for which the permit is registered for use made at least five separate fishing trips with landings of at least 500 lb (227 kg) of bottomfish management unit species per trip during the calender year. Only one landing of bottomfish management unit species per fishing trip to the Mau Zone will be counted toward the landing requirement.

(2) If the vessel for which the permit is registered for use fails to meet the landing requirement of paragraph (j)(1) of this section, the owner may apply to the Regional Administrator for a waiver of the landing requirement. Grounds for a waiver are limited to captain incapacitation, vessel breakdowns, and the loss of the vessel at sea if the event prevented the vessel from meeting the landing requirement. Unprofitability is not sufficient for waiver of the landing requirement.

(3) Failure of the permit holder to register a vessel for use under the permit does not exempt a permit holder from the requirements specified in this paragraph.

(k) *Appeals of permit actions.* (1) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, or revocation of his or her permit to the Regional Administrator.

(2) In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action appealed, and the reasons therefore, and must be submitted within 30 days of the appealed action. The appellant may request an informal hearing on the appeal.

(3) The Regional Administrator, in consultation with the Council, will decide the appeal in accordance with the FMP and implementing regulations and based upon information relative to the application on file at NMFS and the Council, the summary record kept of any hearing, the hearing officer's recommended decision, if any, and any other relevant information.

(4) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. The applicant or permit holder may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. The Regional Administrator's decision on the application is the final administrative decision of the Department of Commerce, and is effective on the date the Administrator signs the decision.

[64 FR 22812, Apr. 28, 1999]

§ 660.62 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.15, it is unlawful for any person to do any of the following:

(a) Fish for bottomfish or seamount groundfish using gear prohibited under § 660.64.

(b) Fish for, or retain on board a vessel, bottomfish management unit species in the Ho'omalu Zone or Mau Zone without the appropriate permit, registered for use with that vessel, issued under § 660.13.

(c) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalu Zone permit without completing a protected species workshop conducted by NMFS, as required by § 660.61.

(d) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalu Zone, as required by § 660.63.

(e) Fish within any protected species study zone in the NWHI without notifying the Regional Director of the intent to fish in these zones, as required under § 660.63.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22814, Apr. 28, 1999]

§ 660.63 Notification.

(a) The owner or operator of a fishing vessel subject to this subpart must inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 660.12. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The operator of a fishing vessel that has taken bottomfish in the Ho'omalu Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

§ 660.64 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for bottomfish and seamount groundfish with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 660.61 or otherwise established to be fishing for bottomfish or seamount groundfish in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish and seamount groundfish is prohibited.

§ 660.65 At-sea observer coverage.

(a) All fishing vessels subject to this subpart must carry an observer when directed to do so by the Regional Director.

(b) The Pacific Area Office will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress of futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other gallery privileges must be the same for the observer as for other crew members.

(d) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Director prior to the vessel's departure from port.

§ 660.66 Protected species conservation.

The Regional Director may change the size of the protected species study zones defined in § 660.12 of this subpart:

(a) If the Regional Director determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.

(b) After consulting with the Council.

(c) Through notification in the FEDERAL REGISTER published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 660.67 Framework for regulatory adjustments.

(a) *Annual reports.* By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(1) Fishery performance data.

(2) Summary of recent research and survey results.

(3) Habitat conditions and recent alterations.

(4) Enforcement activities and problems.

(5) Administrative actions (e.g., data collection and reporting, permits).

(6) State and territorial management actions.

(7) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:

(i) Mean size of the catch of any species in any area is a pre-reproductive size.

(ii) Ratio of fishing mortality to natural mortality for any species.

(iii) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.

(iv) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.

(v) Substantial decline in ex-vessel revenue relative to baseline levels.

(vi) Significant shift in the relative proportions of gear in any one area.

(vii) Significant change in the frozen/fresh components of the bottomfish catch.

(viii) Entry/exit of fishermen in any area.

(ix) Per-trip costs for bottomfishing exceed per-trip revenues for a significant percentage of trips.

(x) Significant decline or increase in total bottomfish landings in any area.

(xi) Change in species composition of the bottomfish catch in any area.

(xii) Research results.

(xiii) Habitat degradation or environmental problems.

(xiv) Reported interactions between bottomfishing operations and protected species in the NWHI.

(8) Recommendations for Council action.

(9) Estimated impacts of recommended action.

(b) *Recommendation of management action.* (1) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, state/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(2) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: Catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(3) The Council may recommend management action by either the state/territorial governments or by Federal regulation.

(c) *Federal management action.* (1) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Director after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(2) The Regional Director will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Director rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(3) The Council may appeal denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(4) The Regional Director and the Assistant Administrator will make their decisions in accord with the Magnuson Act, other applicable law, and the Bottomfish FMP.

(5) To minimize conflicts between the Federal and state management systems, the Council will use the procedures in paragraph (b) of this section to respond to state/territorial management actions. Council consideration of action would normally begin with a representative of the state or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(d) *Access limitation procedures.* (1) Access limitation may be adopted under this paragraph (d) only for the NWHI, American Samoa, and Guam.

(2) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (d), the following requirements must be met:

(i) The Bottomfish Monitoring Team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(ii) Public hearings must be held specifically addressing the limited access proposals.

(iii) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Director on administrative decisions.

(iv) The Council's recommendation to the Regional Director must be approved by a two-thirds majority of the voting members.

(e) *Five-year review*. The Council will conduct a comprehensive review on the effectiveness of the Mau Zone limited access program 5 years following implementation of the program. The Council will consider the extent to which the FMP objectives have been met and verify that the target number of vessels established for the fishery is appropriate for current fishing activity levels, catch rates, and biological condition of the stocks. The Council may establish a new target number based on the 5-year review.

[61 FR 34572, July 2, 1996, as amended at 64 FR 22814, Apr. 28, 1999]

§ 660.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 2004.

[63 FR 35163, June 29, 1998]

§ 660.69 Management subareas.

(a) The bottomfish fishery management area is divided into five subareas for the regulation of bottomfish and seamount groundfish fishing with the following designations and boundaries:

(1) Main Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161°20′ W. long.

(2) Northwestern Hawaiian Islands (NWHI) means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161°20′ W. long. However, for the purposes of regulations issued under this subpart, Midway Island is treated as part of the Northwestern Hawaiian Islands Subarea.

(i) Ho'omalu Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161°20′ W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00′ W. long. and north of 28°00′ N. lat.

(4) Guam means the EEZ seaward of the Territory of Guam.

(5) American Samoa means the EEZ seaward of the Territory of American Samoa.

(b) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, and the Territory of Guam (the ''3 mile-limit'').

(c) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The outer boundary of the fishery management area north of Guam will extend to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

Subpart F—Precious Corals Fisheries

§ 660.81 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining precious coral in any precious coral permit area must have a permit issued under § 660.13.

(b) Each permit will be valid for fishing only in the permit area specified on

the permit. Precious Coral Permit Areas are defined in § 660.12.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Director any current permit for the precious corals fishery issued under § 660.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious corals fishery are contained in § 660.13.

§ 660.82 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 660.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 660.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of precious coral in any precious coral permit area:

(1) By means of gear or methods prohibited by § 660.88.

(2) In refugia specified in § 660.12.

(3) In a bed for which the quota specified in § 660.84 has been attained.

(4) In violation of any permit issued under § 660.13 or § 660.17.

(c) Take and retain, possess, or land any pink coral from the Makapuu Bed (Permit Area E–B–1), Keahole Point Bed (Permit Area C–B–1), or Kaena Point Bed (Permit Area C–B–2) that is less than the minimum height specified in § 660.86, unless:

(1) A valid EFP was issued under § 660.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 660.83 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a 2-year fishing period that begins July 1 and ends June 30, 2 years later.

§ 660.84 Quotas.

(a) *General.* The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in Table 1 of this part. Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for each of the three exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1 through December 31 period.

(4) NMFS will publish in the FEDERAL REGISTER a notification of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

§ 660.85 Closures.

(a) If the Regional Director determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapuu Bed, NMFS will issue a field order closing the bed involved by publication of

an action in the FEDERAL REGISTER, and through appropriate news media. Any such field order must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 660.86 Size restrictions.

Pink coral harvested from the Makapuu bed (E–B–1), the Keahole Point Bed (C–B–1), and the Kaena Point Bed (C–B–2), must have attained a minimum height of 10 inches (25.4 cm). There are no size limits for precious coral from other beds or other species.

§ 660.87 Area restrictions.

Fishing for coral on the WestPac Bed is not allowed. The specific area closed to fishing is all waters within a 2-nm radius of the midpoint of 23°18.0′ N. lat., 162°35.0′ W. long.

§ 660.88 Gear restrictions.

(a) *Selective gear.* Only selective gear may be used to harvest coral from the EEZ of the main Hawaiian Islands.

(b) *Selective or non-selective gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and exploratory areas other than the EEZ off the main Hawaiian Islands.

§ 660.89 Framework procedures.

(a) *Introduction.* Established management measures may be revised and new management measures may be established and/or revised through rulemaking if new information demonstrates that there are biological, social, or economic concerns in a precious coral permit area. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, quotas, season, or levels of catch and/or in effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Precious Coral Team will prepare an annual report on the fisheries in the management area. The report will contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) According to the framework procedures of Amendment 3 to the FMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation will include supporting rationale and analysis and will be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(d) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 3 to the FMP, the Council will publicize, including by a FEDERAL REGISTER document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a FEDERAL REGISTER document summarizing the Council's deliberations, rationale, and analysis for the preferred action and the time and place for any subsequent Council meeting(s) to consider the new measure. At a subsequent public meeting, the Council will consider public comments and other information received before making a recommendation to the Regional Administrator about any new measure. If approved by the Regional Administrator, NMFS may implement the Council's recommendation by rulemaking.

[63 FR 55810, Oct. 19, 1998]

Subpart G—West Coast Groundfish Fisheries

660.301 Purpose and scope.

This subpart implements the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. These regulations govern groundfish fishing vessels of the United States in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

§ 660.302 Definitions.

At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shoreside or on the water.

Closure, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial harvest guideline or commercial quota means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes, for recreational fisheries, and for compensation fishing under § 660.350. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

Council means the Pacific Fishery Management Council, including its Groundfish Management Team, Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel (GAP), and any other committee established by the Council.

Exempted gear means all types of fishing gear except longline, trap (or pot), and groundfish trawl gear. Exempted gear includes trawl gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber south of Pt. Arena, under the authority of a State of California limited entry permit for the sea cucumber fishery.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Fishing gear includes the following types of gear and equipment used in the groundfish fishery:

(1) *Bobbin trawl.* The same as a roller trawl, a type of bottom trawl.

(2) *Bottom trawl.* A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls, Danish and Scottish seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a pelagic trawl in § 660.322 is a bottom trawl.

(3) *Chafing gear.* Webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(4) *Codend.* (See § 600.10).

(5) *Commercial vertical hook-and-line.* Commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(6) *Double-bar mesh.* Two lengths of twine tied into a single knot.

(7) *Double-walled codend.* A codend constructed of two walls of webbing.

(8) *Fixed gear (anchored nontrawl gear).* Longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(9) *Gillnet.* (See § 600.10).

(10) *Hook-and-line.* One or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(11) *Longline.* A stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include commercial vertical hook-and-line or troll gear.

(12) *Mesh size.* The opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(13) *Nontrawl gear.* All legal commercial groundfish gear other than trawl gear.

(14) *Pelagic (midwater or off-bottom) trawl.* A trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

(15) *Pot.* A trap.

(16) *Roller trawl (bobbin trawl).* A trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

(17) *Set net.* A stationary, buoyed, and anchored gillnet or trammel net.

(18) *Single-walled codend.* A codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(19) *Spear.* A sharp, pointed, or barbed instrument on a shaft.

(20) *Trammel net.* A gillnet made with two or more walls joined to a common float line.

(21) *Trap (or pot).* A portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(22) *Trawl riblines.* Heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing trip is a period of time between landings when fishing is conducted.

Fishing year is the year beginning at 0801 GMT (0001 local time) on January 1 and ending at 0800 GMT on January 1 (2400 local time on December 31).

Groundfish means species managed by the PCGFMP, specifically:

Sharks:
- leopard shark, *Triakis semifasciata*
- soupfin shark, *Galeorhinus zyopterus*
- spiny dogfish, *Squalus acanthias*

Skates:
- big skate, *Raja binoculata*
- California skate, *R. inornata*
- longnose skate, *R. rhina*

Ratfish:
- ratfish, *Hydrolagus colliei*

Morids:
- finescale codling, *Antimora microlepis*

Grenadiers:
- Pacific rattail, *Coryphaenoides acrolepis*

Roundfish:
- cabezon, *Scorpaenichthys marmoratus*
- kelp greenling, *Hexagrammos decagrammus*
- lingcod, *Ophiodon elongatus*
- Pacific cod, *Gadus macrocephalus*
- Pacific whiting, *Merluccius productus*
- sablefish, *Anoplopoma fimbria*

Rockfish:
- aurora rockfish, *Sebastes aurora*
- bank rockfish, *S. rufus*
- black rockfish, *S. melanops*
- black and yellow rockfish, *S. chrysomelas*
- blackgill rockfish, *S. melanostomus*
- blue rockfish, *S. mystinus*
- bocaccio, *S. paucispinis*
- bronzespotted rockfish, *S. gilli*
- brown rockfish, *S. auriculatus*
- calico rockfish, *S. dalli*
- California scorpionfish, *Scorpaena guttata*
- canary rockfish, *Sebastes pinniger*
- chilipepper, *S. goodei*
- China rockfish, *S. nebulosus*
- copper rockfish, *S. caurinus*
- cowcod, *S. levis*
- darkblotched rockfish, *S. crameri*
- dusty rockfish, *S. ciliatus*
- flag rockfish, *S. rubrivinctus*
- gopher rockfish, *S. carnatus*
- grass rockfish, *S. rastrelliger*
- greenblotched rockfish, *S. rosenblatti*
- greenspotted rockfish, *S. chlorostictus*
- greenstriped rockfish, *S. elongatus*
- harlequin rockfish, *S. variegatus*
- honeycomb rockfish, *S. umbrosus*
- kelp rockfish, *S. atrovirens*
- longspine thornyhead, *Sebastolobus altivelis*
- Mexican rockfish, *Sebastes macdonaldi*
- olive rockfish, *S. serranoides*
- Pacific ocean perch, *S. alutus*
- pink rockfish, *S. eos*
- quillback rockfish, *S. maliger*
- redbanded rockfish, *S. babcocki*
- redstripe rockfish, *S. proriger*
- rosethorn rockfish, *S. helvomaculatus*
- rosy rockfish, *S. rosaceus*
- rougheye rockfish, *S. aleutianus*
- sharpchin rockfish, *S. zacentrus*
- shortbelly rockfish, *S. jordani*
- shortraker rockfish, *S. borealis*
- shortspine thornyhead, *Sebastolobus alascanus*
- silvergray rockfish, *Sebastes brevispinis*
- speckled rockfish, *S. ovalis*
- splitnose rockfish, *S. diploproa*
- squarespot rockfish, *S. hopkinsi*
- starry rockfish, *S. constellatus*
- stripetail rockfish, *S. saxicola*
- tiger rockfish, *S. nigrocinctus*
- treefish, *S. serriceps*
- vermilion rockfish, *S. miniatus*

widow rockfish, *S. entomelas*
yelloweye rockfish, *S. ruberrimus*
yellowmouth rockfish, *S. reedi*
yellowtail rockfish, *S. flavidus*

All genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California are included, even if not listed above. The Scorpaenidae genera are *Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastolobus*.

Flatfish:
arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias*
butter sole, *Isopsetta isolepis*
curlfin sole, *Pleuronichthys decurrens*
Dover sole, *Microstomus pacificus*
English sole, *Parophrys vetulus*
flathead sole, *Hippoglossoides elassodon*
Pacific sanddab, *Citharichthys sordidus*
petrale sole, *Eopsetta jordani*
rex sole, *Glyptocephalus zachirus*
rock sole, *Lepidopsetta bilineata*
sand sole, *Psettichthys melanostictus*
starry flounder, *Platichthys stellatus*

Groundfish trawl means trawl gear that is used under the authority of a valid limited entry permit issued under this subpart endorsed for trawl gear. It does not include any type of trawl gear listed as ''exempted gear.''

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Incidental catch or *incidental species* means groundfish species caught while fishing for the primary purpose of catching a different species.

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

Length overall (LOA) (with respect to a vessel) means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel; for vessels that do not have the LOA stated in an official document, the LOA is the LOA as determined by the USCG or by a marine surveyor in accordance with the USCG method for measuring LOA.

Limited entry fishery means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited entry fishery.

Limited entry gear means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

Limited entry permit means the permit required to participate in the limited entry fishery, and includes the gear endorsements affixed to the permit unless specified otherwise.

Open access fishery means the fishery composed of vessels using exempted gear, and longline and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery.

Open access gear means all types of fishing gear except:

(1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) Trawl gear.

Optimum yield (OY) means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and, taking into account the protection of marine ecosystems, is prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be expressed numerically (as a harvest guideline, quota, or other specification) or non-numerically.

Owner of a vessel or *vessel owner*, as used in this subpart, means a person identified as the current owner in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.

Pacific Coast Groundfish Fishery Management Plan (PCGFMP) means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the Pacific Fishery Management Council

and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

Permit holder means a permit owner or a permit lessee.

Permit lessee means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion to the permit owner.

Permit owner means a person who owns a limited entry permit.

Person, as it applies to limited entry and open access fisheries conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

Processor means person, vessel, or facility that engages in processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing.

Prohibited species means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Director means the Director, Northwest Region, NMFS. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, ''Regional Director'' means the Director, Northwest Region, NMFS, acting upon the recommendation of the Director, Southwest Region, NMFS.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates of DAP and JVP.

Round weight (See § 600.10).

Shoreside processing means processing that takes place in a facility that is fixed permanently to land.

Specification is a numerical or descriptive designation of a management objective, including but not limited to: ABC; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.

Sustainable Fisheries Division (SFD) means the Chief, Sustainable Fisheries Division, Northwest Regional Office, NMFS, or a designee.

Target fishing means fishing for the primary purpose of catching a particular species or species group (the target species).

Totally lost means the vessel being replaced no longer exists *in specie,* or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Trip limit means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board the vessel, that may be taken and retained, possessed, or landed from a single fishing trip.

[61 FR 34572, July 2, 1996, as amended at 63 FR 34608, June 25, 1998; 63 FR 40067, July 27, 1998; 64 FR 49100, Sept. 10, 1999; 64 FR 69893, Dec. 15, 1999]

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state

data collection requirements. Telephone surveys of the domestic industry will be conducted biannually by NMFS to determine amounts of fish that will be made available to foreign fishing and JVP. No additional Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law.

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

[61 FR 34572, July 2, 1996, as amended at 63 FR 34608, June 25, 1998; 63 FR 40067, July 27, 1998]

§ 660.304 Management areas.

(a) *Vancouver.* (1) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35′75″ N. lat., 124°43′00″ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29′37.19″ N. lat., 124°43′33.19″ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48°29′37.19″	124°43′33.19″
2	48°30′11″	124°47′13″
3	48°30′22″	124°50′21″
4	48°30′14″	124°54′52″
5	48°29′57″	124°59′14″
6	48°29′44″	125°00′06″
7	48°28′09″	125°05′47″
8	48°27′10″	125°08′25″
9	48°26′47″	125°09′12″
10	48°20′16″	125°22′48″
11	48°18′22″	125°29′58″
12	48°11′05″	125°53′48″
13	47°49′15″	126°40′57″
14	47°36′47″	127°11′58″
15	47°22′00″	127°41′23″
16	46°42′05″	128°51′56″
17	46°31′47″	129°07′39″

(3) The southern limit is 47°30′ N. lat.

(b) *Columbia.* (1) The northern limit is 47°30′ N. lat.

(2) The southern limit is 43°00′ N. lat.

(c) *Eureka.* (1) The northern limit is 43°00′ N. lat.

(2) The southern limit is 40°30′ N. lat.

(d) *Monterey.* (1) The northern limit is 40°30′ N. lat.

(2) The southern limit is 36°00′ N. lat.

(e) *Conception.* (1) The northern limit is 36°00′ N. lat.

(2) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35′22″	117°27′49″
2	32°37′37″	117°49′31″
3	31°07′58″	118°36′18″
4	30°32′31″	121°51′58″

(f) *International boundaries.* (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the ''3-mile limit'').

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

§ 660.305 Vessel identification.

(a) *Display.* The operator of a vessel that is over 25 ft (7.6 m) in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches (45.7 cm) high for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) high for vessels between 25 and 65 ft (7.6 and 19.8 m) in length. The length of a vessel for purposes of this section is the length set forth in USCG records or in state records, if no USCG record exists.

(b) *Maintenance of numbers.* The operator of a vessel engaged in commercial fishing for groundfish must keep the identifying markings required by paragraph (a) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(c) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

§ 660.306 Prohibitions.

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

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Retain any prohibited species (defined in § 660.323(c) caught by means of fishing gear authorized under this subpart or unless authorized by part 600 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(c) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.305 or § 660.322(c).

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.350.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP under § 660.350 or part 600 of this chapter.

(f) Take and retain, possess, or land more groundfish than specified under § 660.321 and § 660.323, or under an EFP issued under § 660.350 or part 600 of this chapter.

(g) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.303, provided that person is required to do so by the applicable state law.

(h) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or harvest guideline, if the vessel fished or landed in an area during a time when such trip limit, size limit, harvest guideline or quota applied.

(i) Possess, deploy, haul, or carry onboard a fishing vessel subject to these regulations a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.322, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(j) Process whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless:

(1) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324;

(2) The fish are processed by a waste-processing vessel according to § 660.323(a)(4)(vii); or

(3) The vessel is completing processing of whiting taken on board during that vessel's primary season.

(k) Take and retain or receive, except as cargo or fish waste, whiting on a vessel in the fishery management area that already possesses processed whiting on board, during times or in areas where at-sea processing is prohibited

for the sector in which the vessel participates, unless the fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324.

(l) Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.323(b)(1)(ii)), more than the amount of the trip limit set for black rockfish by § 660.323 while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), or between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(m) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board, without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear, with the following exception. A vessel with groundfish on board may carry groundfish trawl gear if:

(1) The vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California; or

(2) The vessel is a mothership, in which case trawl nets and doors must be stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(n) Fail to carry onboard a vessel that vessel's limited entry permit if required.

(o) Make a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(p) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(q) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed, except a vessel may carry on board limited entry gear as provided in paragraph (m) of this section.

(r) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(s) During the ''regular'' or ''mop-up'' season described in § 660.323(a)(2)(iii) and (iv), take and retain, possess or land sablefish taken and retained north of 36° N. lat., with longline or trap (or pot) gear, by a vessel with a limited entry permit registered for use with that vessel and endorsed for longline or trap (or pot) gear, that does not have a sablefish endorsement.

(t) During the ''regular'' or ''mop-up'' season described in § 660.323(a)(2)(iii) and (iv), take and retain, possess or land sablefish taken and retained north of 36° N. lat., with open access gear, by a vessel with a limited entry permit registered for use with that vessel and endorsed for longline or trap (or pot) gear, that does not have a sablefish endorsement.

(u) Participate in the mothership or shoreside sector as a catcher vessel that does not process fish, if that vessel operates in the same calendar year as a catcher/processor in the whiting fishery, according to § 660.323(a)(4)(ii)(B).

(v) Operate as a waste-processing vessel within 48 hours of a primary season for whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.323(a)(4)(vii).

(w) Fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting, when taking and retention is prohibited under § 660.323(a)(3)(v).

(x) Fail to retain on board a vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

[61 FR 34572, July 2, 1996, as amended at 61 FR 48643, Sept. 16, 1996; 62 FR 27521, May 20, 1997; 62 FR 34674, June 27, 1997; 63 FR 34608, June 25, 1998; 64 FR 49100, Sept. 10, 1999]

§ 660.321 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management

measures annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Director or the Council.

(b) *Annual actions.* The Pacific Coast Groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations.

(c) *Routine management measures.* Management measures designated ''routine'' at § 660.323(b) may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the FEDERAL REGISTER.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the FEDERAL REGISTER.

[61 FR 34572, July 2, 1996, as amended at 64 FR 49100, Sept. 10, 1999]

§ 660.322 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: Trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net (anchored gillnet or trammel net), and spear.

(b) *Trawl gear*—(1) *Use.* Trawl nets may be used on and off the seabed. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth in this paragraph (b)(2). The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending on the gear being measured), less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

MINIMUM TRAWL-MESH SIZE IN INCHES [1]

Trawl conception type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	
Bottom	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

[1] Metric conversion: 3.0 inches = 7.6 cm; 4.5 inches = 11.4 cm.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a ''skirt'') may encircle the net under transfer cables,

lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Fixed gear.* (1) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy, except as provided in paragraph (c)(2) of this section.

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. ''Closely tended'' means that a vessel is within visual sighting distance or within 0.25 nm (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or (c)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(d) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. lat.

(e) *Traps or pots.* Traps must have biodegradable escape panels constructed with # 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(f) *Recreational fishing.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear.

(g) *Spears.* Spears may be propelled by hand or by mechanical means.

§ 660.323 Catch restrictions.

(a) Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in this section.

(1) *Black rockfish.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.

(2) *Nontrawl sablefish.* This paragraph (a)(2) applies to the regular and mop-up seasons for the nontrawl limited entry sablefish fishery north of 36° N. lat., except for paragraphs (a)(2)(ii), (iv), and (vii) of this section, which also apply to the open access fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing south of 36° N. lat. is governed by routine management measures imposed under paragraph (b) of this section.

(i) *Sablefish endorsement.* A vessel may not participate in the regular or mop-up season for the nontrawl limited entry fishery, unless the vessel's owner holds (by ownership or otherwise) a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement.

(ii) *Pre-season closure—open access and limited entry fisheries.* (A) Sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ may not be retained or landed during the 48 hours immediately before the start of the regular season for the nontrawl limited entry sablefish fishery.

(B) All fixed gear used to take and retain groundfish must be out of EEZ waters during the 48 hours immediately before the opening of the regular season for the nontrawl limited entry sablefish fishery.

(iii) *Regular season—nontrawl limited entry sablefish fishery.* (A) The Regional Administrator will announce a season for waters north of 36° N. lat. to start on any day from August 1 through September 30, based on consultations with the Council, taking into account tidal

conditions, Council meeting dates, alternative fishing opportunities, and industry comments.

(B) During the regular season, each vessel with a limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit announced for the tier to which the permit is assigned. Each permit will be assigned to one of three tiers. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

(C) The Regional Administrator will annually calculate the length of the regular season and the size of the cumulative trip limit for each tier in accordance with the process specified in chapter 1 of the EA/RIR/IRFA for ''Fixed Gear Sablefish Tiered Cumulative Limits,'' dated February 1998, which is available from the Council. The season length and the size of the cumulative trip limits will vary depending on the amount of sablefish available for the regular and mop-up fisheries and the projected harvest for the fishery. The season will be set to be as long as possible, under the constraints described in chapter 1 of the EA/RIR/IRFA, up to a maximum season length of 10 days.

(D) During the regular and mop-up season, limited entry nontrawl sablefish fishers may also be subject to trip limits to protect juvenile sablefish.

(E) There will be no limited entry, daily trip limit fishery during the regular season.

(iv) *Post-season closure—limited entry and open access.* No sablefish taken with fixed gear north of 36° N. lat. during the 30 hours immediately after the end of the regular season for the nontrawl limited entry sablefish fishery, may be retained. Sablefish taken and retained during the regular season may be possessed and landed during the 30–hour period. Gear may remain in water during the 30–hour post-season closure. Fishers may not set or pull from the water fixed gear used to take and retain groundfish during the 30–hour post-season closure.

(v) *Mop-up season—limited entry fishery.* A mop-up season to take the remainder of the limited entry nontrawl allocation will begin in waters north of 36° N. lat. about 3 weeks, or as soon as practicable, after the end of the regular season. During the mop-up fishery, a cumulative trip limit will be imposed. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips. The length of the mop-up season and the amount of the cumulative trip limit, will be determined by the Regional Administrator in consultation with the Council or its designees, and will be based primarily on the amount of fish remaining in the limited entry nontrawl allocation, the amount of sablefish needed for the remainder of the daily trip limit fishery, and the number of mop-up participants anticipated. The Regional Administrator may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season. There will be no limited entry daily trip limit fishery during the mop-up season.

(vi) *Other announcements.* The dates and times that the regular season starts and ends (and trip limits on sablefish of all sizes are resumed), the size of the cumulative trip limits for the three tiers in the regular fishery, the dates and times for the 30–hour post-season closure, the dates and times that the mop-up season begins and ends, and the size of the cumulative trip limit for the mop-up fishery will be announced in the FEDERAL REGISTER, and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date.

(vii) *Trip limits.* Trip and/or frequency limits may be imposed in the limited entry fishery before and after the regular season, and after the mop-up season, under paragraph (b) of this section. Trip and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under paragraph (b) of this section. Trip limits may be imposed in the open-access fishery at

any time under paragraph (b) of this section.

(3) *Pacific whiting (whiting)*—(i) *Seasons.* The primary seasons for the whiting fishery are: For the shore-based sector, the period(s) when the large-scale target fishery is conducted (when trip limits under paragraph (b) of this section are not in effect); for catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and for vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector. Before and after the primary seasons, trip landing or frequency limits may be imposed under paragraph (b) of this section. The sectors are defined at paragraph (a)(4) of this section.

(A) *North of 40°30′ N. lat.* Different starting dates may be established for the catcher/processor sector, the mothership sector, catcher vessels delivering to shoreside processors north of 42° N. lat., and catcher vessels delivering to shoreside processors between 42°–40°30′ N. lat.

(*1*) *Procedures.* The primary seasons for the whiting fishery north of 40°30′ N. lat. generally will be established according to the procedures in the PCGFMP for developing and implementing annual specifications and apportionments. The season opening dates remain in effect unless changed, but will be announced annually, generally with the annual specifications and management measures.

(*2*) *Criteria.* The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(B) *South of 40°30′ N. lat.* The primary season starts on April 15 south of 40°30′ N. lat.

(ii) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(A) *Klamath River Salmon Conservation Zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W. long. (approximately 12 nm from shore), and on the south by 41°26′48″ N. lat. (approximately 6 nm south of the Klamath River mouth).

(B) *Columbia River Salmon Conservation Zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N. lat. to 124°13′18″ W. long., then southerly along a line of 167 True to 46°11′06″ N. lat. and 124°11′ W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(iii) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.321 or § 660.323, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43°00′ to 40°30′ N. lat.).

(iv) *At-sea processing.* Whiting may not be processed at sea south of 42°00′ N. lat. (Oregon-California border), unless by a waste-processing vessel as authorized under paragraph (a)(4)(vii) of this section.

(v) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00′ N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′ N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in *The Nautical Almanac* issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(4) *Whiting—allocation*—(i) *Sectors and allocations.* The commercial harvest guideline for whiting is allocated among three sectors, as follows.

(A) *Sectors.* The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors.

(B) *Allocations.* The allocations are: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shoreside sector. No more than 5 percent of the shoreside allocation may be taken and retained south of 42° N. lat. before the start of the primary season north of 42° N. lat. These allocations are harvest guidelines unless otherwise announced in the FEDERAL REGISTER.

(ii) *Additional restrictions on catcher/processors.*

(A) A catcher/processor may receive fish from a catcher vessel, but that catch is counted against the catcher/processor allocation unless the catcher/processor has been declared as a mothership under paragraph (a)(4)(ii)(C) of this section.

(B) A catcher/processor may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year.

(C) When renewing its limited entry permit each year under § 660.333, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit holder. Any request to rescind a declaration must made by the permit holder and granted in writing by the Regional Director before any unprocessed whiting has been taken on board the vessel that calendar year.

(iii) *Reaching an allocation.* If the whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached, the following action(s) for the applicable sector(s) may be taken as provided under paragraph (a)(4)(vi) of this section and will remain in effect until additional amounts are made available the next fishing year or under paragraph (a)(4)(iv) of this section.

(A) *Catcher/processor sector.* Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) *Mothership sector.* (*1*) Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited.

(*2*) Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) *Shoreside sector.* Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shoreside sector except as authorized under a trip limit specified under § 660.323(b).

(D) *Shoreside south of 42° N. lat.* If 5 percent of the shoreside allocation for whiting is taken and retained south of 42° N. lat. before the primary season for the shoreside sector begins north of 42° N. lat., then a trip limit specified under paragraph (b) of this section may be implemented south of 42° N. lat. until the northern primary season begins, at which time the southern primary season would resume.

(iv) *Reapportionments.* That portion of a sector's allocation that the Regional Director determines will not be used by the end of the fishing year shall be made available for harvest by the other sectors, if needed, in proportion to

their initial allocations, on September 15 or as soon as practicable thereafter. NMFS may release whiting again at a later date to ensure full utilization of the resource. Whiting not needed in the fishery authorized under § 660.324 also may be made available.

(v) *Estimates.* Estimates of the amount of whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(vi) *Announcements.* The Assistant Administrator will announce in the FEDERAL REGISTER when a harvest guideline, commercial harvest guideline, or an allocation of whiting is reached, or is projected to be reached, specifying the appropriate action being taken under paragraph (a)(4)(iii) of this section. The Regional Director will announce in the FEDERAL REGISTER any reapportionment of surplus whiting to other sectors on September 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of surplus whiting may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the FEDERAL REGISTER, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

(vii) *Processing fish waste at sea.* A vessel that processes only fish waste (a ''waste-processing vessel'') is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(A) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(B) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under paragraph (b) of this section.

(C) Any trawl net and doors on board are stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(D) The vessel does not receive codends containing fish.

(E) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the FEDERAL REGISTER if they first have been designated as ''routine'' according to the applicable procedures in the PCGFMP. The following catch restrictions are designated as routine for the reasons given in paragraph (b)(1)(ii) of this section:

(1) *Commercial-limited entry and open access fisheries—*

(i) *Species and gear.* (A) Widow rockfish—all gear—trip landing and frequency limits.

(B) *Sebastes* complex—all gear—trip landing and frequency limits.

(C) Yellowtail rockfish—all gear—trip landing and frequency limits.

(D) Pacific ocean perch—all gear—trip landing and frequency limits.

(E) Sablefish—all gear—trip landing, frequency, and size limits.

(F) Dover sole—all gear—trip landing and frequency limits.

(G) Thornyheads (shortspine thornyheads or longspine thornyheads, separately or combined)—all gear—trip landing and frequency limits.

(H) Bocaccio—all gear—trip landing and frequency limits.

(I) Pacific whiting—all gear—trip landing and frequency limits.

(J) Lingcod—all gear—trip landing and frequency limits; size limits.

(K) Canary rockfish—all gear—trip landing and frequency limits.

(L) All groundfish, separately or in any combination—any legal open access gear (including non-groundfish trawl gear used to harvest pink shrimp, spot or ridgeback prawns, California halibut or sea cucumbers in accordance with the regulations in this subpart)—trip landing and frequency limits. (Size limits designated routine in this section continue to apply.)

(ii) *Reasons for ''routine'' management measures.* All routine management measures on commercial fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Trip landing and frequency limits—to extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) Size limits—to protect juvenile fish; to extend the fishing season.

(2) *Recreational*—(i) *Species and gear.* (A) Lingcod—all gear—bag and size limits.

(B) Rockfish—all gear—bag limits.

(ii) *Reasons for ''routine'' management measures.* All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Bag limits—to spread the available catch over a large number of anglers; to avoid waste; for consistency with state regulations.

(B) Size limits—to protect juvenile fish; to enhance the quality of the recreational fishing experience; for consistency with state regulations.

(c) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

[61 FR 34572, July 2, 1996; 61 FR 37843, July 22, 1996; 61 FR 48643, Sept. 16, 1996; 62 FR 27522, May 20, 1997; 62 FR 45356, Aug. 27, 1997; 63 FR 38113, July 15, 1998]

§ 660.324 Pacific Coast treaty Indian fisheries.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters.

(b) For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) The Pacific Coast treaty Indian tribes' usual and accustomed fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah*—That portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.

(2) *Quileute*—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long.

(3) *Hoh*—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.

(4) *Quinault*—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be

implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Director, prior to the first of the Council's two annual groundfish meetings. The Secretary generally will announce the annual tribal allocation at the same time as the annual specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification*. A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is *prima facie* evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) A limited entry permit under subpart C is not required for participation in a tribal fishery described in paragraph (d) of this section.

(g) Fishing under this section by a member of a Pacific Coast treaty Indian tribe within their usual and accustomed fishing area is not subject to the provisions of other sections of this part.

(h) Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in paragraph (d) of this section.

(i) Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation or regulation under this section, is subject to the regulations in the other sections of this part.

(j) *Black rockfish*. Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established annually for the areas between the U.S.-Canadian border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), in accordance with the procedures for implementing annual specifications. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

(k) *Groundfish without a tribal allocation*. Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

§ 660.331 Limited entry and open access fisheries—general.

All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

§ 660.332 Allocations.

(a) *General*. The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

(1) *Limited entry allocation*. The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides for recreational or tribal Indian fisheries) minus the allocation to the open access fishery.

(2) *Open access allocation*. The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational or tribal Indian fisheries. For management areas where quotas or harvest

guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(b) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(1) Computing the total catch for that species during the window period by any vessel that does not initially receive a limited entry permit.

(2) Dividing that amount by the total catch during the window period by all gear.

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation. If a gear type is prohibited by a state or the Secretary and a vessel thereby qualifies for a limited entry permit under this subpart, or if a small limited entry fleet is incorporated into the limited entry fishery under § 660.338, the window-period catch of these vessels will be deducted from the open access fishery's historical catch levels and the open access allocation percentage recalculated accordingly.

(c) *Catch accounting between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines.* Additional guidelines governing determination of the limited entry and open access allocations are in the PCGFMP.

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to the regulations governing limited entry and open access fisheries.

(f) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be set aside prior to dividing the commercial allocation between the commercial limited entry and open access fisheries.

§ 660.333 Limited entry fishery—general.

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel hold (by ownership or otherwise) a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. A sablefish endorsement is also required for a vessel to participate in the regular and/or mop-up seasons for the nontrawl, limited entry sablefish fishery, north of 36° N. lat. There are three types of gear endorsements: ''A,'' ''Provisional A,'' and ''Designated species B.'' More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear; except that during a period when the limited entry fixed gear sablefish fishery is limited to those vessels with sablefish endorsements, a longline or pot (or trap) limited entry permit holder without a sablefish endorsement may not fish for sablefish with open access gear.

(b) *Renewal of limited entry permits and gear endorsements.*

(1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notification to renew limited entry permits will be issued by FMD prior to September 1 each year to the most recent address of the permit owner. The permit owner shall provide FMD with notice of any address change within 15 days of the change.

(3) A limited entry permit that is allowed to expire will not be renewed unless the FMD determines that failure to renew was proximately caused by the illness, injury, or death of the permit owner.

(c) *Transfer and registration of limited entry permits and gear endorsements.* (1) When the SFD transfers the limited entry permit on behalf of the permit holder, the SFD will reissue the permit in the name of the new permit holder with such gear and, if applicable, species endorsements and tier assignments as are eligible for transfer with the permit. Permit transfers will take effect on the first day of the next major limited entry cumulative limit period following the date of the transfer. Transfers of permits designated as participating in the ''B'' platoon will become effective on the first day of the next ''B'' platoon major limited entry cumulative limit period following the date of the transfer. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel and the permit is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the SFD and placed on board the vessel before it is used under the permit. Registration of a permit to be used with a new vessel will take effect on the first day of the next major limited entry cumulative limit period following the date of the transfer.

(3) The major limited entry cumulative limit periods will be announced in the FEDERAL REGISTER each year with the annual specifications and management measures, or with routine management measures when the cumulative limit periods are changed.

(4) Application forms for the transfer and registration of limited entry permits are available from the FMD (see part 600 for address of the Regional Director). Contents of the application, and required supporting documentation, are specified in the application form.

(5) The FMD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(d) *Evidence and burden of proof.* A vessel owner (or persons holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to provide evidence that qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a sablefish endorsement or a tier assignment under § 660.336, paragraph (c) or (d) has the burden to submit evidence to prove that qualification requirements are met. A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met. The following evidentiary standards apply:

(1) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(2) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

(4) Such other relevant, credible evidence as the applicant may submit, or the FMD or the Regional Director request or acquire, may also be considered.

(e) *Initial decisions.* Initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the FMD.

Adverse decisions shall be in writing and shall state the reasons therefor. The FMD may decline to act on an application for issuance, renewal, transfer, or registration of a limited entry permit if the permit sanction provisions of the Magnuson Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(f) *Transfers.* Limited entry permits are transferable as follows:

(1) The permit owner may transfer (by sale, assignment, lease, bequest, intestate succession, barter, trade, gift, or other form of conveyance) the limited entry permit to a different person. The permit holder may register the permit for use with a different vessel under the same ownership, subject to the conditions set forth in this subpart.

(2) Limited entry permits may not be transferred to a different holder or registered for use with a different vessel more than once every 12 months, except in cases of death of the permit holder or if the permitted vessel is totally lost, as defined at § 600.302. The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies. When a permit transferred from one holder to another holder is initially ''unidentified'' with regard to vessel registration, or when a permit's vessel registration is otherwise ''unidentified'', the transaction is not considered a ''transfer'' for purposes of this restriction until the permit is registered for use with a specific vessel.

(3) Except as provided in §§ 660.335(b), 660.336(b), and 660.337(b)(2), only ''A'' gear endorsements remain valid with the transfer of a limited entry permit.

(g) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a limited entry permit.

(h) *Vessel size endorsements*—(1) *General.* The limited entry permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit was initially issued under section 14.3.2.3.8 of the FMP [re pre-1991 replacement vessels qualifying for ''provisional A'' permits] for a replacement vessel that was more than 5 ft (1.52 m) longer than the replaced vessel, the permit will be endorsed for the size of the replacement vessel.

(ii) If the permit was initially issued to a replacement trawl vessel that was more than 5 ft (1.52 m) shorter than the replaced vessel, it will be endorsed for the size of the smaller replacement vessel.

(iii) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(iv) When permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size of the larger vessel.

(2) *Limitations of size endorsements*—(i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 ft (1.52 m) shorter and 5 ft (1.52 m) longer than the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement under paragraph (h)(1)(iii) of this section.

(iii) Two or more limited entry permits with ''A'' gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. With respect to permits endorsed for nontrawl limited entry gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish endorsements. If two or more permits with sablefish endorsements are combined, the new permit will receive the same tier assignment as the tier with the largest cumulative landing limit of the permits being combined. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the

two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

(i) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

[61 FR 34572, July 2, 1996, as amended at 62 FR 34674, June 27, 1997; 63 FR 34608, June 25, 1998; 63 FR 38114, July 15, 1998; 63 FR 40067, July 27, 1998; 64 FR 41044, July 29, 1999]

§ 660.334 Limited entry permits—"A" endorsement.

(a) A limited entry permit with an ''A'' endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See § 660.336 for provisions regarding sablefish endorsement requirements.

(b) An ''A'' endorsement is transferable with the limited entry permit to another person, or a different vessel under the same ownership under § 660.333.

(c) An ''A'' endorsement expires on failure to renew the limited entry permit to which it is affixed (see § 660.333).

[61 FR 34572, July 2, 1996, as amended at 62 FR 34674, June 27, 1997]

§ 660.335 Limited entry permits—"Provisional A" endorsement.

(a) A ''provisional A'' endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a fixed gear sablefish endorsement is required. See § 660.336 for provisions regarding sablefish endorsement requirements.

(b) A ''provisional A'' endorsement is not transferrable except as specified in the PCGFMP.

(c) The holder of a ''provisional A'' endorsement must comply with the requirements set out in the PCGFMP at 14.3.2.4 in order for the permit to be upgraded to an ''A'' permit.

(d) A ''provisional A'' endorsement expires at the end of any of the three consecutive 365-day periods (during the 3-year qualifying period) in which a vessel's landings do not meet the applicable landing requirement or upon failure to renew the limited entry permit. A ''provisional A'' endorsement that expires will not be reissued.

[61 FR 34572, July 2, 1996, as amended at 62 FR 34674, June 27, 1997]

§ 660.336 Limited entry permits—sablefish endorsement and tier assignment.

(a) *General.* Participation in the limited entry fixed gear sablefish fishery during the ''regular'' or ''mop-up'' season described in § 660.323 (a)(2)(iii) and (iv) north of 36° N. lat., requires that an owner of a vessel hold (by ownership or otherwise) a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. During a period when the limited entry sablefish fishery is restricted to those limited entry vessels with sablefish endorsements, a vessel with a longline or pot limited entry permit but without a sablefish endorsement cannot be used to harvest sablefish in the open access fishery, even with open access gear.

(1) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(2) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred separately from the limited entry permit.

(b) *Endorsement and tier assignment qualifying criteria.* A sablefish endorsement will be affixed to any limited entry permit that meets the sablefish endorsement qualifying criteria and for which the owner submits a timely application. Limited entry permits with sablefish endorsements will be assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

(1) Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement and to determine the appropriate tier assignment for endorsed permits. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if the appeal for which an interim permit was issued was lost by the appellant, and the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full ''A'' permit was ultimately granted will also be considered part of the catch history of the ''A'' permit. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. If the current permit is the result of the combination of multiple permits, the combined catch histories of all of the permits that were combined to create a new permit before March 12, 1998, will be used in calculating the tier assignment for the resultant permit, together with any catch history (during the qualifying period) of the resultant permit. Only sablefish catch regulated by this part that was taken with longline or fish trap (or pot) gear will be considered for this endorsement. Sablefish harvested illegally or landed illegally will not be considered for this endorsement.

(2) The sablefish endorsement qualifying criteria are: At least 16,000 lb (7,257.5 kg) round weight of sablefish caught with longline or trap (or pot) gear in one calendar year from 1984 through 1994. All catch must be sablefish managed under this part. Sablefish taken in tribal set-aside fisheries does not qualify.

(3) Only limited entry, fixed gear permits with sablefish endorsements will receive cumulative trip limit tier assignments. The qualifying criteria for Tier 1 are: At least 898,000 lb (406,794 kg) cumulative round weight of sablefish caught with longline or trap (or pot) gear over the years 1984 through 1994. The qualifying criteria for Tier 2 are: At least 380,000 lb (172,365 kg), but no more than 897,999 lb (406,793 kg) cumulative round weight of sablefish caught with longline or trap (or pot) gear over the years 1984 through 1994. Fixed gear permits with less than 380,000 lb (172,365 kg) cumulative round weight of sablefish caught with longline or trap (or pot) gear over the years 1984 through 1994 qualify for Tier 3. All catch must be sablefish managed under this part. Sablefish taken in tribal set aside fisheries does not qualify.

(c) *Issuance process for sablefish endorsements.* (1) The SFD has notified each limited entry, fixed gear permit holder, by letter of qualification status, whether Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) records indicate that his or her permit qualifies for a sablefish endorsement. A person who has been notified by the SFD, by letter of qualification status, that his or her permit qualifies for a sablefish endorsement will be issued a revised limited entry permit with a sablefish endorsement if, by November 30, 1998, that person returns to the SFD the endorsement application and pays the one-time processing fee. No new applications for sablefish endorsements will be accepted after November 30, 1998.

(2) If the permit owner receives a letter of qualification status from the FMD indicating that PacFIN records do not show that his or her permit qualifies for a sablefish endorsement and if the permit owner believes that there is sufficient evidence to show that his or her permit does qualify for an endorsement, that permit holder must submit information to the FMD to demonstrate that the permit does qualify for a sablefish endorsement within 30 days of the issuance of the

FMD's letter of qualification status. Section 660.333(d) sets out the relevant evidentiary standards and burden of proof.

(3) After review of the evidence submitted under § 660.336(c)(2), and any additional information the FMD finds to be relevant, the FMD will notify a permit owner if the permit qualifies for a sablefish endorsement. A person whose permit qualifies will be issued a revised limited entry permit with a sablefish endorsement upon payment of the one-time processing fee.

(4) After review of the evidence submitted under § 660.336(c)(2), and any additional information the FMD finds to be relevant, the FMD will notify a permit owner of his determination that the permit does not qualify for a sablefish endorsement.

(5) If permit holder wishes to file an appeal of the determination under § 660.336(c)(4), the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter (at § 660.336(c)(4)). The appeal must be in writing and must allege facts or circumstances, and include credible evidence, demonstrating why the permit (or interim permit) qualifies for the sablefish endorsement. The appeal of a denial of a sablefish endorsement will not be referred to the Council for a recommendation under § 660.340(e).

(6) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(d) *Issuance process for tier assignments.* (1) The SFD will notify each owner of a limited entry permit with a sablefish endorsement, by letter of qualification status, of the tier assignment for which his or her permit qualifies, as indicated by PacFIN records. The SFD will also send to the permit owner a tier assignment certificate.

(2) If a permit owner believes there is sufficient evidence to show that his or her permit qualifies for a different tier than that listed in the letter of qualification status, that permit owner must, within 30 days of the issuance of the SFD's letter of qualification status, submit information to the SFD to demonstrate that the permit qualifies for a different tier. Section 660.333(d) sets out the relevant evidentiary standards and burden of proof.

(3) After review of the evidence submitted under paragraph (d)(2) of this section, and any additional information the SFD finds to be relevant, the SFD will issue a letter of determination notifying a permit owner of whether the evidence submitted is sufficient to alter the initial tier assignment. If the SFD determines the permit qualifies for a different tier, the permit owner will be issued a revised tier assignment certificate once the initial certificate is returned to the SFD for processing.

(4) If a permit owner chooses to file an appeal of the determination under paragraph (d)(3) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter of determination (at paragraph (d)(3) of this section). The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under § 660.340(e).

(5) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(e) *Tier assignment certificates.* For the 1998 season only, permit holders with sablefish endorsements will be issued certificates of tier assignment that are to be kept with and are considered part of their limited entry permits. When limited entry permit holders renew their permits for 1999, tier assignments for those limited entry permit holders with sablefish endorsements will be indicated directly on the limited entry permit.

[62 FR 34674, June 27, 1997, as amended at 63 FR 38114, July 15, 1998]

§ 660.337 Limited entry permits—"designated species B" endorsement.

(a) *Issuance criteria*—(1) *General. Designated species* means Pacific whiting and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries in the PCGFMP.

(2) *Catch limit.* On or about October 1 of each year, the FMD will determine the commitment of persons with limited entry permits with ''A'' gear endorsements (the ''limited entry fleet'') to harvest each designated species for delivery to domestic processors during the coming year. ''Commitment'' means a permit holder's contract or agreement with a specific domestic processor to deliver an estimated amount of the designated species. The ''designated species B'' endorsement catch limit is the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If the commitment is less than DAP and the harvest guideline or quota for the species, ''designated species B'' endorsements valid for delivery to domestic processors will be issued in numbers necessary to reach but not exceed the harvest guideline or quota. ''Designated species B'' endorsements also may be issued for delivery to foreign processors of designated species for which a JVP is established. If, at any time during the fishing year, the FMD determines that any part of the limited entry fleet commitment will not be taken, the Regional Director will make a reapportionment to the ''designated species B'' endorsement catch limit. The amount of the annual limited entry fleet commitment, ''designated species B'' endorsement catch limit, and the amounts and timing of any reapportionments to the ''designated species B'' endorsement catch limit will be announced in the FEDERAL REGISTER.

(3) *Procedure for issuance.* Owners of vessels applying for ''designated species B'' endorsements must apply on or before November 1 of each year for a ''designated species B'' endorsement for the following year. Applications are available from the FMD. Applicants are required to specify their commitments for delivery of the designated species for the coming year. On or about November 1 of each year, the FMD will establish a prioritized list of applicants based on seniority (number of years the vessel has fished for the designated species). A vessel which replaces a lost vessel, consistent with the standards in the PCGFMP, has the same seniority status as the replaced vessel. Vessels with equal seniority will be ranked equally. ''Designated species B'' endorsements will be issued first to all vessels with the highest seniority, then to those with the next highest seniority, and so on down the list. No further endorsements will be issued when it is estimated that the commitments of applicants receiving endorsements is sufficient to take the ''designated species B'' catch limit. If there are insufficient commitments by senior applicants to take the ''designated species B'' catch limit, additional applications will be ranked by lottery and a number of endorsements sufficient to take the catch limit will be issued.

(b) *Attributes.* (1) A limited entry permit with a ''designated species B'' endorsement entitles the permit recipient to fish only for the species, and only with the gear, specified in the endorsement.

(2) A ''designated species B'' endorsement is not transferable to another person, and may not be used with a different vessel under the same ownership, unless the vessel has been totally lost and replaced consistent with the provisions of the PCGFMP, in which case the replacement vessel has the same seniority as the lost vessel for purposes of a ''designated species B'' endorsement.

(3) A ''designated species B'' endorsement is valid only for the fishing year for which it is issued.

[61 FR 34572, July 2, 1996, as amended at 64 FR 69893, Dec. 15, 1999]

§ 660.338 Limited entry permits—new permits.

(a) Small limited entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of

the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued according to the standards and procedures set out in the PCGFMP and will carry the rights explained therein. Window period is that period from July 11, 1984, through August 1, 1988.

(b) If, after the window period, an exempt gear is prohibited by Washington, Oregon, or California or NMFS, the owners of vessels using such gear, who would not otherwise qualify for an ''A'' or ''provisional A'' endorsement, may qualify for a ''provisional A'' endorsement for only one of the three limited entry gears, if the vessel used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear. If a vessel would qualify for an endorsement for more than one limited entry gear, the owner must choose the type of gear for which the endorsement will be issued. If an ''A'' or ''provisional A'' endorsement was previously issued for the vessel, and the endorsement was subsequently transferred or expired, no ''provisional A'' endorsement will be issued. Permits issued under this section will be issued according to the procedures and standards set out in the PCGFMP and will carry the rights explained therein.

(c) An owner of a vessel that qualifies under this section must apply to the FMD for a permit within 180 days of incorporation of the limited entry fleet of which the vessel is a part or within 180 days of the effective date of the prohibition of that vessel's gear. Untimely applications will be rejected unless the applicant demonstrates that circumstances beyond the applicant's control prevented submission of the application during the specified period. Illness, injury, or death of the potential applicant are the primary grounds on which untimely applications may be accepted.

§ 660.339 Limited entry permit fees.

The Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits, including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

§ 660.340 Limited entry permit appeals.

(a) Decisions on appeals of initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the Regional Director.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the FMD denying issuance, renewal, transfer, or registration of a limited entry permit, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Director.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why an exception should be granted.

(e) At the appellant's discretion, the appeal may be accompanied by a request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgement that the confidentiality provisions of the Magnuson Act at 16 U.S.C. 1853(d) and part 600 of this chapter are waived with respect to any information supplied by the Regional Director to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of the PCGFMP in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the Regional Director will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Director's decision is the final administrative decision of the Department as of the date of the decision.

§ 660.341 Limited entry permit sanctions.

Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart G for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. NMFS may issue an EFP allowing a vessel to retain fish as compensation in excess of trip limits or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP for vessels under contract with NMFS to conduct a resource survey*. NMFS may issue an EFP to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish, including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish the vessel may take and retain after the resource survey is completed.

(1) *Competitive offers*. NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval*. At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the optimum yield (harvest guideline or quota).

(3) *Issuance of the compensation EFP*. Upon successful completion of the survey, NMFS will issue a ''compensation EFP'' to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subpart G).

(4) *Terms and conditions of the compensation EFP*. Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions may be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch*. The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation catch.* As part of the annual specifications process (§ 660.321), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next year's ABCs before setting the HGs or quotas. Fish authorized in an EFP too late in the year to be deducted from the following year's ABC will be accounted for in the next management cycle practicable.

(b) *Compensation for commercial vessels collecting resource information under a standard EFP.* NMFS may issue an EFP to allow a commercial fishing vessel to take and retain fish in excess of current management limits for the purpose of collecting resource information (§ 600.745(b) of this chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can reasonably be obtained at a less cost to the resource.

(3) *Window period for other applications.* If the RA or designee agrees that compensation should be considered, and that more than a minor amount would be used as compensation, then a window period will be announced in the FEDERAL REGISTER during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 660.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS, and NMFS approves the selection method, the permit applicant may choose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that NMFS will waive for a vessel fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, count toward the current year's catch or landings.

[64 FR 49101, Sept. 10, 1999]

Subpart H—West Coast Salmon Fisheries

§ 660.401 Purpose and scope.

This subpart implements the Fishery Management Plan for Commercial and

Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California developed by the Pacific Fishery Management Council. These regulations govern the management of West Coast salmon fisheries in the EEZ.

§ 660.402 Definitions.

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

Barbless hook means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Where barbless hooks are specified, hooks manufactured with barbs can be made barbless by forcing the point of the barb flat against the main part of the point.

Commercial fishing means fishing with troll fishing gear as defined annually under § 660.408, or fishing for the purpose of sale or barter of the catch.

Council means the Pacific Fishery Management Council.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see Figure 3 of this subpart) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails (see Figure 3 of this subpart).

Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(1) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the United States and Canada (at 48°29′37″ N. lat., 124°43′33″ W. long.), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Northern and northwestern boundary is a line[1] connecting the following coordinates:

N. lat.	*W. long.*
48°29′37.19″	124°43′33.19″
48°30′11″	124°47′13″
48°30′22″	124°50′21″
48°30′14″	124°52′52″
48°29′57″	124°59′14″
48°29′44″	125°00′06″
48°28′09″	125°05′47″
48°27′10″	125°08′25″
48°26′47″	125°09′12″
48°20′16″	125°22′48″
48°18′22″	125°29′58″
48°11′05″	125°53′48″
47°49′15″	126°40′57″
47°36′47″	127°11′58″
47°22′00″	127°41′23″
46°42′05″	128°51′56″
46°31′47″	129°07′39″

(3) The southern boundary of the fishery management area is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates:

N. lat.	*W. long.*
32°35′22″	117°27′49″
32°37′37″	117°49′31″
31°07′58″	118°36′18″
30°32′31″	121°51′58″

(4) The inner boundaries of the fishery management area are subject to change if the Secretary assumes responsibility for the regulation of the salmon fishery within state waters under section 306(b) of the Magnuson Act.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, that has a present capability for:

(1) On board freezing of the catch.

(2) Storage of the fish in a frozen condition until they are landed.

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish onboard

[1] The line joining these coordinates is the provisional international boundary of the U.S. EEZ as shown on NOAA/NOS Charts #18480 and #18002.

the vessel are counted as part of the landing.

Plugs means artificial fishing lures made of wood or hard plastic with one or more hooks attached. Lures commonly known as ''spoons,'' ''wobblers,'' ''dodgers,'' and flexible plastic lures are not considered plugs, and may not be used where ''plugs only'' are specified.

Recreational fishing means fishing with recreational fishing gear as defined annually under § 660.408 and not for the purpose of sale or barter.

Recreational fishing gear will be defined annually under § 660.408.

Regional Director means the Director, Northwest Region, NMFS, or a designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Director, Northwest Region, NMFS, acting in consultation with the Director, Southwest Region, NMFS.

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including, but not limited to:

Chinook (king) salmon, *Oncorhynchus tshawytscha*
Coho (silver) salmon, *Oncorhynchus kisutch*
Pink (humpback) salmon, *Oncorhynchus gorbuscha*
Chum (dog) salmon, *Oncorhynchus keta*
Sockeye (red) salmon, *Oncorhynchus nerka*
Steelhead (rainbow trout), *Oncorhynchus mykiss*

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Treaty Indian fishing means fishing for salmon and steelhead in the fishery management area by a person authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise fishing rights under the Treaty of Olympia.

Troll fishing gear will be defined annually under § 660.408.

Whole bait means a hook or hooks baited with whole natural bait with no device to attract fish other than a flasher.

§ 660.403 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter, § 660.2, and paragraphs (b) and (c) of this section.

(b) Any person fishing subject to this subpart who also engages in fishing for groundfish should consult Federal regulations in subpart G for applicable requirements of that subpart, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 660.305.

(c) Any person fishing subject to this subpart is bound by the international boundaries of the fishery management area described in § 660.402, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

§ 660.404 Recordkeeping and reporting.

(a) This subpart recognizes that catch and effort data necessary for implementation of any applicable fishery management plan are collected by the States and Indian tribes of Washington, Oregon, California, and Idaho under existing data collection requirements. Except as provided in paragraph (b) of this section, no additional catch reports will be required of fishermen or processors so long as the data collection and reporting systems operated by State agencies and Indian tribes continue to provide NMFS with statistical information adequate for management.

(b) Persons engaged in commercial fishing may be required to submit catch reports that are specified annually under § 660.408.

EFFECTIVE DATE NOTE: At 61 FR 34600, July 2, 1996, § 660.404 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 660.405 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) Take and retain or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(2) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) While possessing on board any species not allowed to be taken in the area at the time;

(iii) Once any catch limit is attained;

(iv) By means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized under § 660.408(k) for treaty Indian fishing;

(v) In violation of any action issued under this subpart; or

(vi) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(3) Fish for salmon in an area when salmon of less than the legal minimum length for that area are on board the fishing vessel, except that this provision does not prohibit transit of an area when salmon of less than the legal minimum length for that area are on board, so long as no fishing is being conducted.

(4) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(5) Take and retain or possess on board a fishing vessel any species of salmon that is less than the applicable minimum total length, including the applicable minimum length for dressed, head-off salmon.

(6) Possess on board a fishing vessel a salmon, for which a minimum total length is extended or cannot be determined, except that dressed, head-off salmon may be possessed on board a freezer trolling vessel, unless the adipose fin of such salmon has been removed.

(7) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this subpart.

(8) Engage in recreational fishing while aboard a vessel engaged in commercial fishing. This restriction is not intended to prohibit the use of fishing gear otherwise permitted under the definitions of troll and recreational fishing gear, so long as that gear is legal in the fishery for which it is being used.

(9) Take and retain, possess, or land any steelhead taken in the course of commercial fishing in the fishery management area, unless such take and retention qualifies as treaty Indian fishing.

(10) Sell, barter, offer to sell, offer to barter, or purchase any salmon taken in the course of recreational salmon fishing.

(11) Refuse to submit fishing gear or catch subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(12) Take and retain Pacific halibut (*Hippoglossus stenolepis*) except in accordance with regulations of the International Pacific Halibut Commission at part 300 of this title. Pacific halibut that cannot be retained lawfully must be returned to the water immediately and with the least possible injury.

(13) Violate any other provision of this subpart.

(b) The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified.

§ 660.406 Exempted fishing.

(a) NMFS may allow such exempted fishing in the fishery management area as may be recommended by the Council, the Federal Government, state government, or treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) NMFS will not allow any exempted fishery recommended by the Council unless NMFS determines that the purpose, design, and administration of the exempted fishery are consistent with

the goals and objectives of the Council's fishery management plan, the national standards (section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any exempted fishery recommended by the Council and allowed by NMFS is subject to all provisions of this subpart, except those portions which relate to the purpose and nature of the exempted fishery. These exceptions will be specified in a permit issued by the Regional Director to each vessel participating in the exempted fishery and that permit must be carried aboard each participating vessel.

§ 660.407 Treaty Indian fishing.

Except as otherwise provided in this subpart, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this subpart, the Magnuson Act, and any other regulations issued under the Magnuson Act.

§ 660.408 Annual actions.

(a) *General.* NMFS will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing the action in the FEDERAL REGISTER under § 660.411. Management specifications are set forth in paragraphs (b) through (n) of this section.

(b) *Allowable ocean harvest levels.* The allowable ocean harvest for commercial, recreational, and treaty Indian fishing may be expressed in terms of season regulations expected to achieve a certain optimum harvest level or in terms of a particular number of fish. Procedures for determining allowable ocean harvest vary by species and fishery complexity, and are documented in the fishery management plan and Council documents.

(c) *Allocation of ocean harvest levels*—(1) *Coho and chinook from the U.S.-Canada border to Cape Falcon*—(i) *Overall allocation schedule.* Initial allocation of coho and chinook salmon north of Cape Falcon, OR, will be based on the following schedule:

Allowable non-treaty ocean harvest (thousands of fish)	Percentage [1]	
	Commercial	Recreational
Coho:		
0–300	25	75
>300	60	40
Chinook:		
0–100	50	50
>100–150	60	40
>150	70	30

[1] The percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, for a total allowable ocean harvest of 150,000 chinook, the recreational allocation would be equal to 50 percent of 100,000 chinook plus 40 percent of 50,000 chinook or 50,000 + 20,000 = 70,000 chinook.

(ii) *Deviations from allocation schedule.* The initial allocation may be modified annually in accordance with paragraphs (c)(1)(iii) through (vii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (c)(1)(viii) and (ix) of this section. Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, and spawning requirements. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

(iii) *Preseason trades.* Preseason species trades (chinook and coho) may be made if they are based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon; simultaneously benefit both the commercial and recreational fisheries or benefit one fishery without harming the other; and are supported by a socio-economic analysis that compares the impacts of the recommendation to those of the standard allocation schedule to determine the allocation that best meets the allocation objectives. This analysis will be made available to the public during the preseason process for establishing annual management measures. Preseason trades will use an exchange ratio of four coho to one chinook as a desirable guideline.

(iv) *Commercial allocation.* The commercial allowable ocean harvest of chinook and coho derived during the preseason allocation process may be varied by major subareas (i.e., north of Leadbetter Point and south of Leadbetter Point) if there is need to do so to decrease impacts on weak stocks. Deviations in each major subarea will generally not exceed 50 percent of the allowable ocean harvest of each species that would have been established without a geographic deviation in the distribution of the allowable ocean harvest. Deviation of more than 50 percent will be based on a conservation need to protect the weak stocks and will provide larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation.

(v) *Recreational allocation.* The recreational allowable ocean harvest of chinook and coho derived during the preseason allocation process will be distributed among the three major recreational subareas as described in the coho and chinook distribution sections below. Additionally, based upon the recommendation of the recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon, the Council will include criteria in its preseason salmon management recommendations to guide any inseason transfer of coho among the recreational subareas to meet recreational season duration objectives. The Council may also establish additional subarea quotas with a major subarea to meet recreational season objectives based on agreement of representatives of the affected ports.

(A) *Coho distribution.* The preseason recreational allowable ocean harvest of coho north of Cape Falcon will be distributed to provide 50 percent to the area north of Leadbetter Point and 50 percent to the area south of Leadbetter Point. In years with no fishery in Washington State management area 4B, the distribution of coho north of Leadbetter Point will be divided to provide 74 percent to the subarea between Leadbetter Point and the Queets River (Westport) and 26 percent to the subarea north of the Queets River (Neah Bay/La Push). In years when there is an area 4B fishery under state management, 25 percent of the numerical value of that fishery shall be added to the recreational allowable ocean harvest north of Leadbetter Point prior to applying the sharing percentages. That same value would then be subtracted from the Neah Bay/La Push share in order to maintain the same total distribution north of Leadbetter Point.

(B) *Chinook distribution.* Subarea distributions of chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing chinook restrictions (i.e., area closures or bag limit reductions). Chinook in excess of all-species fisheries needs may be utilized by directed chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of chinook and coho between commercial and recreational allocations in accordance with paragraph (c)(1)(iii) of this section.

(vi) *Inseason trades and transfers.* Inseason transfers, including species trades of chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the harvest management objectives specific in the fishery management plan including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer. Inseason trades or transfers may vary from the guideline ratio of four coho to one chinook to meet the allocation objectives in paragraph (c)(1)(viii) of this section.

(vii) *Other inseason provisions.* Any increase or decrease in the recreational or commercial allowable ocean harvest resulting from an inseason restructuring of a fishery or other inseason

management action does not require reallocation of the overall non-treaty allowable ocean harvest north of Cape Falcon between the recreational and commercial fisheries. Inseason redistribution of subarea quotas within the recreational fishery or the distribution of allowable coho catch transfers from the commercial fishery among subareas may deviate from the preseason distribution. Inseason management actions may be taken by the Regional Director to assure meeting the primary objective of achieving all-species fisheries without imposing chinook restrictions in each of the recreational subareas north of Cape Falcon. Such actions might include, but are not limited to: Closure from 0 to 3, 0 to 6, 3 to 200, or 5 to 200 nm from shore; closure from a point extending due west from Tatoosh Island for 5 nm, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from North Head at the Columbia River mouth north to Leadbetter Point; change in species that may be landed; or other actions as prescribed in the annual management measures.

(viii) *Allocation objectives.* The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the following objectives for the commercial and recreational fisheries. When deviation from the allocation schedule is being considered, these objectives will serve as criteria to help determine whether a user group will benefit from the deviation.

(A) Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily and area closures and restrictions on gear and daily limits.

(B) Maximize the value of the commercial harvest while providing fisheries of reasonable duration.

(ix) *Fishery allocation priorities.* The following fishery allocation priorities will provide guidance in the preseason process of establishing final harvest allocations and structuring seasons that best achieve the allocation objectives. To the extent fish are provided to each fishery by the allocation schedule, these priorities do not favor one user group over the other and should be met simultaneously for each fishery. Seasons may be structured that deviate from these priorities consistent with the allocation objectives.

(A) At total allowable harvest levels up to 300,000 coho and 100,000 chinook: For the recreational fishery, provide coho for a late June through early September all-species season; provide chinook to allow access to coho and, if possible, a minimal chinook-only fishery prior to the all-species season; and adjust days per week and/or institute area restrictions to stabilize season duration. For the commercial fishery, provide chinook for a May and early June chinook season and provide coho for hooking mortality and/or access to a pink fishery, and ensure that part of the chinook season will occur after June 1.

(B) At total allowable harvest levels above 300,000 coho and above 100,000 chinook: For the recreational fishery, relax any restrictions in the all-species fishery and/or extend the all-species season beyond Labor Day as coho quota allows; provide chinook for a Memorial Day through late June chinook-only fishery; and adjust days per week to ensure continuity with the all-species season. For the commercial fishery, provide coho for an all-species season in late summer and/or access to a pink fishery; and leave adequate chinook from the May through June season to allow access to coho.

(2) *Coho south of Cape Falcon*—(i) *Allocation schedule.* Preseason allocation shares of coho salmon south of Cape Falcon, OR, will be determined by an allocation schedule, which is based on the following formula. The formula will be used to interpolate between allowable harvest levels as shown in the table below.

(A) Up to 350,000 allowable ocean harvest: The first 150,000 fish will be allocated to the recreational fishery. Additional fish will be allocated 66.7 percent to troll and 33.3 percent to recreational. The incidental coho mortality for a commercial all-salmon-except-coho fishery will be deducted from the troll allocation. If the troll allocation is insufficient for this purpose, the remaining number of coho needed for this estimated incidental coho mortality will be deducted from the recreational share.

(B) From 350,000 to 800,000 allowable ocean harvest: The recreational allocation is equal to 14 percent of the allowable harvest above 350,000 fish, plus 217,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(C) Above 800,000 allowable ocean harvest: The recreational allocation is equal to 10 percent of the allowable harvest above 800,000 fish, plus 280,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
2,700	2,230	82.6	470	17.4
2,600	2,140	82.3	460	17.7
2,500	2,050	82.0	450	18.0
2,400	1,960	81.7	440	18.3
2,300	1,870	81.3	430	18.7
2,200	1,780	80.9	420	19.1
2,100	1,690	80.5	410	19.5
2,000	1,600	80.0	400	20.0
1,900	1,510	79.5	390	20.5
1,800	1,420	78.9	380	21.1
1,700	1,330	78.2	370	21.8
1,600	1,240	77.5	360	22.5
1,500	1,150	76.7	350	23.3
1,400	1,060	75.7	340	24.3
1,300	970	74.6	330	25.4
1,200	880	73.3	320	26.7
1,100	790	71.8	310	28.2
1,000	700	70.0	300	30.0
900	610	67.8	290	32.2
800	520	65.0	280	35.0
700	434	62.0	266	38.0
600	348	58.0	252	42.0
500	262	52.4	238	47.6
400	176	44.0	224	56.0
350	133	38.0	217	62.0
300	100	33.3	200	66.7
200	[1] 33	[1] 16.5	[1] 167	[1] 83.5
100	([1])	([1])	([1])	([1])

[1] An incidental coho allowance associated with any commercial all-salmon-except-coho fishery will be deducted from the recreational share of coho during periods of low coho abundance when the commercial allocation of coho under the schedule would be insufficient to allow for incidental hooking mortality of coho in the commercial all-salmon-except-coho fishery.

(ii) *Geographic distribution*. Allowable harvest south of Cape Falcon may be divided and portions assigned to subareas based on considerations including, but not limited to, controlling ocean harvest impacts on depressed, viable natural stocks within acceptable maximum allowable levels; stock abundance; allocation considerations; stock specific impacts; relative abundance of the salmon species in the fishery; escapement goals; and maximizing harvest potential.

(iii) *Recreational allocation at 167,000 fish or less*. When the recreational allocation is at 167,000 fish or less, the total recreational allowable ocean harvest of coho will be divided between two major subareas with independent impact quotas. The initial allocation will be 70 percent from Cape Falcon to Humbug Mountain and 30 percent south of Humbug Mountain. Coho transfers between the two impact quotas may be permitted on a one-for-one basis, if chinook constraints preclude access to coho. Horse Mountain to Point Arena will be managed for an impact guideline of 3 percent of the south of Cape Falcon recreational allocation. The recreational coho fishery between Humbug Mountain and Point Arena may be closed when it is projected that the harvest impact between Humbug Mountain and Point Arena, combined with the projected harvest impact that will be taken south of Point Arena to the end of the season, equals the impact quota for south of Humbug Mountain. The recreational fishery for coho salmon south of Point Arena will not close upon attainment of the south of Humbug Mountain impact quota.

(iv) *Oregon coastal natural coho*. At Oregon coastal natural coho spawning escapements of 28 or fewer adults per mile, the allocation provisions of paragraph (c)(2)(i) of this section do not apply. Fisheries will be established that will provide only the minimum incidental harvest of Oregon coastal natural coho necessary to prosecute other fisheries, and that under no circumstances will cause irreparable harm to the Oregon coastal natural coho stock.

EDITORIAL NOTE: At 64 FR 26328, May 14, 1999, the following paragraph (c)(2)(iv) was revised, effective June 14, 1999, however, the effectiveness of § 660.408 has never been established since approval of the information collection requirements has not been published in the FEDERAL REGISTER.

(iv) *Oregon coastal natural coho*. The allocation provisions in paragraph (c)(2) of this section provide guidance only when coho abundance permits a

directed coho harvest, not when the allowable harvest impacts are insufficient to allow coho retention south of Cape Falcon. At such low levels, allowable harvest impacts will be allocated during the Council's preseason process.

(v) *Inseason reallocation*. No later than August 15 each year, the Salmon Technical Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery that are not needed to complete the recreational seasons will be reallocated to the commercial fishery. Once reallocation has taken place, the remaining recreational quota will change to a harvest guideline. If the harvest guideline for the recreational fishery is projected to be reached on or before Labor Day, the Regional Director may allow the recreational fishery to continue through the Labor Day weekend only if there is no significant danger of impacting the allocation of another fishery or of failing to meet an escapement goal.

(d) *Management boundaries and zones*. Management boundaries and zones will be established or adjusted to achieve a conservation purpose. A conservation purpose protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), LORAN readings, depth contours, distance from shore, or similar criteria.

(e) *Minimum harvest lengths*. The minimum harvest lengths for commercial, recreational, and treaty Indian fishing may be changed upon demonstration that a useful purpose will be served. For example, an increase in minimum size for commercially caught salmon may be necessary for conservation or may provide a greater poundage and monetary yield from the fishery while not substantially increasing hooking mortality. The removal of a minimum size for the recreational fishery may prevent wastage of fish and outweigh the detrimental impacts of harvesting immature fish.

(f) *Recreational daily bag limits*. Recreational daily bag limits for each fishing area will be set equal to one, two, or three salmon of some combination of species. The recreational daily bag limits for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

(g) *Fishing gear restrictions*. Gear restrictions for commercial, recreational, and treaty Indian fishing may be established or modified upon demonstration that a useful purpose will be served. For example, gear restrictions may be imposed or modified to facilitate enforcement, reduce hooking mortality, or reduce gear expenses for fishermen.

(h) *Seasons*—(1) *In general*. Seasons for commercial and recreational fishing will be established or modified taking into account allowable ocean harvest levels and quotas, allocations between the commercial and recreational fisheries, and the estimated amount of effort required to catch the available fish based on past seasons.

(2) *Commercial seasons*. Commercial seasons will be established or modified taking into account wastage of fish that cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas. All-species seasons will be established to allow the maximum allowable harvest of pink and sockeye salmon without exceeding allowable chinook or coho harvest levels and within conservation and allocation constraints of the pink and sockeye stocks.

(3) *Recreational seasons*. If feasible, recreational seasons will be established or modified to encompass Memorial Day and Labor Day weekends, and to avoid the need for inseason closures.

(i) *Quotas* (by species, including fish caught 0–3 nm seaward of Washington, Oregon, and California). Quotas for commercial, recreational, and treaty Indian fishing may be established or modified to ensure that allowable ocean harvests are not exceeded. Quotas may be fixed or adjustable and used in conjunction with seasons. Any quota established does not represent a

guaranteed ocean harvest, but a maximum ceiling on catch.

(j) *Selective fisheries.* In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, selective coho-only, chinook-only, or pink-only fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

(k) *Treaty Indian fishing.* (1) NMFS will establish or modify treaty Indian fishing seasons and/or fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions taking into account recommendations of the Council, proposals from affected tribes, and relevant Federal court proceedings.

(2) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems on other stocks.

(3) Any fixed or adjustable quotas established will be consistent with established treaty rights and will not exceed the harvest that would occur if the entire treaty entitlement to the weakest run were taken by treaty Indian fisheries in the fishery management area.

(4) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

(l) *Yurok and Hoopa Valley tribal fishing rights.* For purposes of section 303 of the Magnuson Act, the federally reserved fishing rights of the Yurok and Hoopa Valley Indian Tribes as set out in a legal opinion[2] dated October 4, 1993, by the Office of the Solicitor, Department of the Interior, are applicable law. Under section 303 of the Magnuson Act, allowable ocean harvest must be consistent with all applicable laws.

(m) *Inseason notice procedures.* Telephone hotlines and USCG broadcasts will provide actual notice of inseason actions for commercial, recreational, and treaty Indian fishing.

(n) *Reporting requirements.* Reporting requirements for commercial fishing may be imposed to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief radio report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually.

[61 FR 34601, July 2, 1996, as amended at 64 FR 26328, May 14, 1999]

EFFECTIVE DATE NOTE: At 61 FR 34601, July 2, 1996, § 660.408 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 660.409 Inseason actions.

(a) *Fixed inseason management provisions.* NMFS is authorized to take the following inseason management actions annually, as appropriate.

(1) *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by an inseason action issued under § 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to

[2] Copies of the Solicitor's Opinion are available from the Director, Southwest Region, NMFS.

which the quota applies as of the date the quota is projected to be reached.

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, NMFS will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided NMFS finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. The season will be reopened by an inseason action issued under § 660.411.

(3) *Adjustment for error in preseason estimates.* NMFS may, by an inseason action issued under § 660.411, make appropriate changes in relevant seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance are identified, provided that such correction can be made in a timely manner to affect the involved fishery without disrupting the capacity to meet the objectives of the fishery management plan.

(b) *Flexible inseason management provisions.* (1) The Regional Director will consult with the Chairman of the Council and the appropriate State Directors prior to taking any of the following flexible inseason management provisions, which include, but are not limited to, the following:

(i) Modification of quotas and/or fishing seasons.

(ii) Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations.

(iii) Modification of recreational bag limits and recreational fishing days per calendar week.

(iv) Establishment or modification of gear restrictions.

(v) Modification of boundaries, including landing boundaries, and establishment of closed areas.

(2) Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the fishery management plan. All inseason adjustments will be based on consideration of the following factors:

(i) Predicted sizes of salmon runs.

(ii) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations, if applicable.

(iii) Amount of commercial, recreational, and treaty Indian catch for each species in the area to date.

(iv) Amount of commercial, recreational, and treaty Indian fishing effort in the area to date.

(v) Estimated average daily catch per fisherman.

(vi) Predicted fishing effort for the area to the end of the scheduled season.

(vii) Other factors, as appropriate.

§ 660.410 Escapement and management goals.

(a) The escapement and management goals are summarized in Table 6–1 of the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California.

(b) *Modification of escapement goals.* NMFS is authorized, through an action issued under § 660.411, to modify an escapement goal if—

(1) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council and the Salmon Technical Team, justifies modification of an escapement goal;

(2) For Oregon coastal chinook, specific goals are developed within the overall goal for north coast and south coast stocks; or

(3) Action by a Federal court indicates that modification of an escapement goal is appropriate.

(c) The annual management measures will be consistent with NMFS jeopardy standards or NMFS recovery plans for species listed under the Endangered Species Act.

[61 FR 34572, July 2, 1996, as amended at 62 FR 35451, July 1, 1997]

§ 660.411 Notification and publication procedures.

(a) *Notification and effective dates.* (1) Annual and certain other actions taken

under §§ 660.408 and 660.410 will be implemented by an action published in the FEDERAL REGISTER, and will be effective upon filing, unless a later time is specified in the action.

(2) Inseason actions taken under § 660.409 will be by actual notice available from telephone hotlines and USCG broadcasts, as specified annually. Inseason actions will also be published in the FEDERAL REGISTER as soon as practicable. Inseason actions will be effective from the time specified in the actual notice of the action (telephone hotlines and USCG broadcasts), or at the time the inseason action published in the FEDERAL REGISTER is effective, whichever comes first.

(3) Any action issued under this section will remain in effect until the expiration date stated in the action or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(b) *Public comment.* If time allows, NMFS will invite public comment prior to the effective date of any action published in the FEDERAL REGISTER. If NMFS determines, for good cause, that an action must be filed without affording a prior opportunity for public comment, public comments on the action will be received by NMFS for a period of 15 days after filing of the action with the Office of the Federal Register.

(c) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Region, NMFS. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevant to the action also will be made available for public review during normal office hours at the Southwest Region, NMFS.

Subpart I—Coastal Pelagics Fisheries

SOURCE: 64 FR 69893, Dec. 15, 1999, unless otherwise noted.

§ 660.501 Purpose and scope.

This subpart implements the Fishery Management Plan for Coastal Pelagic Species (FMP). These regulations govern commercial fishing for CPS in the EEZ off the coasts of Washington, Oregon, and California.

§ 660.502 Definitions.

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

Actively managed species (AMS) means those CPS for which the Secretary has determined that harvest guidelines or quotas are needed by Federal management according to the provisions of the FMP.

Advisory Subpanel (AP) means the Coastal Pelagic Species Advisory Subpanel that comprises members of the fishing industry and public appointed by the Council to review proposed actions for managing the coastal pelagic fisheries.

Biomass means the estimated amount, by weight, of a coastal pelagic species population. The term biomass means total biomass (age 1 and above) unless stated otherwise.

Coastal pelagic species (CPS) means northern anchovy (*Engraulis mordax*), Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opelescens*).

Coastal Pelagic Species Management Team (CPSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for the CPS fishery.

Council means the Pacific Fishery Management Council, including its CPSMT, AP, Scientific and Statistical Committee (SSC), and any other committee established by the Council.

Finfish means northern anchovy, Pacific mackerel, Pacific sardine, and jack mackerel.

Fishery Management Area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico.

Fishing trip means a period of time between landings when fishing is conducted.

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require complete closure of a fishery.

Harvesting vessel means a vessel involved in the attempt or actual catching, taking or harvesting of fish, or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish.

Land or *Landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish onboard the vessel are counted as part of the landing.

Limited entry fishery means the commercial fishery consisting of vessels fishing for CPS in the CPS Management Zone under limited entry permits issued under § 660.512.

Live bait fishery means fishing for CPS for use as live bait in other fisheries.

Monitored species (MS) means those CPS the Secretary has determined not to need management by harvest guidelines or quotas according to the provisions of the FMP.

Nonreduction fishery means fishing for CPS for use as dead bait or for processing for direct human consumption.

Owner, means a person who is identified as the current owner in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

Person, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or *to process* means preparing or packaging coastal pelagic species to render the fish suitable for human consumption, pet food, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless there is additional preparation.

Prohibited Species means all species of trout and salmon (*Salmonidae*) and Pacific halibut (*Hippoglossus stenolepis*).

Quota means a specified numerical harvest objective for a single species of CPS, the attainment (or expected attainment) of which causes the complete closure of the fishery for that species.

Reduction fishery means fishing for CPS for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or byproducts for purposes other than direct human consumption.

Regional Administrator means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year for specific purposes, such as for individual harvesting groups to ensure equitable distribution of the resource or to allow for uncertainties in preseason estimates of DAP and JVP.

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or a designee.

Totally lost means that the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Trip limit means the total allowable amount of a CPS species by weight or by percentage of weight of fish on board the vessel that may be taken and retained, possessed, or landed from a single fishing trip by a vessel that harvests CPS.

§ 660.503 Management subareas.

The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following designations and boundaries:

(a) *CPS Limited Entry Zone* means the EEZ between:

(1) Northern boundary—at 39°00'00'' N. lat. off California; and

(2) Southern boundary—the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22'' N. lat., 117°27'49'' W. long.
32°37'37'' N. lat., 117°49'31'' W. long.
31°07'58'' N. lat., 118°36'18'' W. long.
30°32'31'' N. lat., 121°51'58'' W. long.

(b) *Subarea A* means the EEZ between:

(1) Northern boundary—the United States-Canada Provisional International Boundary, which is a line connecting the following coordinates:

48°29'37.19'' N. lat. 124°43'33.19'' W. long.
48°30'11'' N. lat. 124°47'13'' W. long.
48°30'22'' N. lat. 124°50'21'' W. long.
48°30'14'' N. lat. 124°54'52'' W. long.
48°29'57'' N. lat. 124°59'14'' W. long.
48°29'44'' N. lat. 125°00'06'' W. long.
48°28'09'' N. lat. 125°05'47'' W. long.
48°27'10'' N. lat. 125°08'25'' W. long.
48°26'47'' N. lat 125°09'12'' W. long.
48°20'16'' N. lat. 125°22'48'' W. long.
48°18'22'' N. lat. 125°29'58'' W. long.
48°11'05'' N. lat. 125°53'48'' W. long.
47°49'15'' N. lat. 126°40'57'' W. long.
47°36'47'' N. lat. 127°11'58'' W. long.
47°22'00'' N. lat. 127°41'23'' W. long.
46°42'05'' N. lat. 128°51'56'' W. long.
46°31'47'' N. lat. 129°07'39'' W. long.; and

(2) Southern boundary—at 35°40'00'' N. lat. (Pt. Piedras Blancas).

(c) *Subarea B* means the EEZ between:

(1) Northern boundary—35°40'00'' N. lat. (Pt. Piedras Blancas); and

(2) Southern boundary—the United States-Mexico International Boundary described in paragraph (a)(2) of this section.

§ 660.504 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this subpart must 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 visible from enforcement vessels and aircraft.

(b) *Numerals.* The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 14 inches (35.56 cm) in height. Markings must be legible and of a color that contrasts with the background.

§ 660.505 Prohibitions.

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:

(a) In the CPS Limited Entry Zone, take and retain, possess or land more than 5 mt of CPS finfish, other than live bait, on a harvesting vessel without a limited entry permit.

(b) In the CPS Limited Entry Zone, take and retain, possess or land more than 125 mt of CPS finfish on a harvesting vessel.

(c) Sell CPS without an applicable commercial state fishery license.

(d) Fish in the reduction fishery for CPS in any closed area specified in § 660.507.

(e) Fish in the reduction fishery for northern anchovy using gear not authorized under § 660.506.

(f) When fishing for CPS, fail to return a prohibited species to the sea immediately with a minimum of injury.

(g) Falsify or fail to affix and maintain vessel markings as required by § 660.504.

(h) Fish for CPS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter.

(i) When a directed fishery has been closed, take and retain, possess, or land more than the incidental trip limit announced in the FEDERAL REGISTER.

(j) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(k) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving CPS, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.3.

(l) Fail to carry aboard a vessel that vessel's limited entry permit issued under § 660.512 or exempted fishing permit issued under § 660.516.

(m) Make a false statement on an application for issuing, renewing, transferring, or replacing a limited entry permit for the CPS fishery.

§ 660.506 Gear restrictions.

The only fishing gear authorized for use in the reduction fishery for northern anchovy off California are round haul nets that have a minimum wet-stretch mesh size of 10/16 of an inch (1.59 cm) excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area, adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of 2 meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel and will be no wider than 10/16 of an inch (1.59 cm) less one thickness of the metal at the widest part.

§ 660.507 Closed areas to reduction fishing.

The following areas are closed to reduction fishing:

(a) *Farallon Islands closure* (see Figure 1 to this subpart). The portion of Subarea A bounded by—

(1) A straight line joining Pigeon Point Light (37°10.9' N. lat., 122°23.6' W. long.) and the U.S. navigation light on Southeast Farallon Island (37°42.0' N. lat., 123°00.1' W. long.); and

(2) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0' N. lat., 123°00.1' W. long.) and the U.S. navigation light on Point Reyes (37°59.7' N. lat., 123°01.3' W. long.).

(b) *Subarea B closures.* Those portions of Subarea B described as–

(1) *Oxnard closure* (see Figure 1 to this subpart). The area that extends offshore 4 miles from the mainland shore between lines running 250° true from the steam plant stack at Manadalay Beach (34°12.4' N. lat., 119°15.0' W. long.) and 220° true from the steam plant stack at Ormond Beach (34°07.8' N. lat., 119°10.0' W. long.).

(2) *Santa Monica Bay closure* (see Figure 1 to this subpart). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8' N. lat., 188°40.8' W. long.) to Rocky Point (Palos Verdes Point) (33°46.5' N. lat., 118°25.7' W. long.).

(3) *Los Angeles Harbor closure* (see Figure 1 to this subpart). The area outside Los Angeles Harbor described by a line extending 6 miles 180° true from Point Fermin (33°42.3' N. lat., 118°17.6' W. long.) and then to a point located 3 miles offshore on a line 225° true from Huntington Beach Pier (33°39.2' N. lat., 118°00.3' W. long.).

(4) *Oceanside to San Diego closure* (see Figure 1 to this subpart). The area 6 miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4' N. lat., 117°24.1' W. long.) of Oceanside Harbor to the United States-Mexico International Boundary.

§ 660.508 Annual specifications.

(a) The Regional Administrator will determine the harvest guidelines or quotas for all AMS from the estimated biomass and the formulas in the FMP.

(b) Harvest guidelines or quotas, including any apportionment between the directed fishery and set-aside for incidental harvest, will be published in the FEDERAL REGISTER before the beginning of the relevant fishing season.

(c) The announcement of each harvest guideline or quota will contain the following information:

(1) A summary of the status of AMS and MS;

(2) The estimated biomass on which the harvest guideline or quota was determined;

(3) The portion, if appropriate, of the harvest guideline or quota set aside to allow for incidental harvests after closure of the directed fishery;

(4) The estimated level of the incidental trip limit that will be allowed after the directed fishery is closed; and

(5) The allocation, if appropriate, between Subarea A and Subarea B.

(d) Harvest guidelines and quotas will receive a public review according to the following procedure:

(1) A meeting will be held between the Council's CPSMT and AP, where the estimated biomass and the harvest guideline or quota will be reviewed and public comments received. This meeting will be announced in the FEDERAL REGISTER before the date of the meeting, if possible.

(2) All materials relating to the biomass and harvest guideline or quota

will be forwarded to the Council and its Scientific and Statistical Committee and will be available to the public from the Regional Administrator.

(3) At a regular meeting of the Council, the Council will review the estimated biomass and harvest guideline or quota and offer time for public comment. If the Council requests a revision, justification must be provided.

(4) The Regional Administrator will review the Council's recommendations, justification, and public comments and base his or her final decision on the requirements of the FMP.

§ 660.509 Closure of directed fishery.

When the directed fishery portion of the harvest guideline or quota is estimated to be taken, the Regional Administrator will announce in the FEDERAL REGISTER the date of closure of the directed fishery for CPS and the amount of the incidental trip limit that will be allowed.

§ 660.510 Fishing seasons.

All seasons will begin at 0001 hours and terminate at 2400 hours local time. Fishing seasons for the following CPS species are:

(a) *Pacific sardine*. January 1 to December 31, or until closed under § 660.509.

(b) *Pacific mackerel*. July 1 to June 30, or until closed under § 660.509.

§ 660.511 Catch restrictions.

(a) All CPS harvested shoreward of the outer boundary of the EEZ (0–200 nautical miles off shore) will be counted toward the catch limitations specified in this section.

(b) The trip limit for harvesting vessels fishing in the CPS Limited Entry Zone for CPS other than live bait without a limited entry permit is 5 mt tons of all CPS finfish combined.

(c)The trip limit for vessels with a limited entry permit on a fishing trip in which the vessel fishes or lands fish in the Limited Entry Zone is 125 mt of all CPS finfish combined.

(d) After the directed fishery for a CPS is closed under § 660.509, no person may take and retain, possess or land more of that species than the incidental trip limit set by the Regional Administrator.

(e) While fishing for CPS, all species of trout and salmon (*Salmonidae*) and Pacific halibut (*Hippoglossus stenolepis*) are prohibited species and must be released immediately with a minimum of injury.

§ 660.512 Limited entry fishery.

(a) *General*. (1) This section applies to fishing for or landing CPS finfish in the limited entry fishery in the Limited Entry Zone.

(2) Effective January 1, 2000, the owner of a vessel with more than 5 mt of CPS finfish on board in the CPS Limited Entry Zone, other than live bait, must have a limited entry permit registered for use with that vessel.

(3) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) qualifies to be issued or may hold, by ownership or otherwise, a limited entry permit.

(b) *Initial qualification*. (1) A limited entry permit for a vessel will be issued only if that vessel landed 100 mt of CPS finfish from January 1, 1993, through November 5, 1997.

(2) A limited entry permit will be issued only to the current owner of the vessel, unless:

(i) The previous owner of a vessel qualifying for a permit, by the express terms of a written contract, reserved the right to the limited entry permit, in which case the limited entry permit will be issued to the previous owner based on the catch history of the qualifying vessel, or

(ii) A vessel that would have qualified for a limited entry permit was totally lost prior to issuance of a limited entry permit. In this case, the owner of the vessel at the time it was lost retains the right to a permit for a replacement vessel, unless the owner conveyed the right to another person by the express terms of a written contract. The lost vessel must be replaced within 2 years of the date that the qualifying vessel was lost, and the replaced vessel must be of equal or less net tonnage.

(c) *Documentation and burden of proof*. A vessel owner (or person holding limited entry rights under the express terms of a written contract as specified in paragraph (a)(2)) of this section applying for issuance, renewal, transfer,

or registration of a limited entry permit must prove that the qualification requirements are met by submitting the following documentation:

(1) A certified copy of the vessel's documentation as a fishing vessel of the United States (U.S. Coast Guard or state) is the best evidence of vessel ownership;

(2) A certified copy of a state fish landing receipt is the best evidence of a landing of a vessel;

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and

(4) Other relevant, credible evidence that the applicant may wish to submit or that the SFD may request or require.

(d) *Fees.* The Regional Administrator may charge fees to cover administrative expenses related to issuing limited entry permits, as well as renewing, transferring, and replacing permits. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the 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.

(e) *Initial decisions.* (1) The SFD will make initial decisions regarding issuing, renewing, transferring, and registering limited entry permits.

(2) Adverse decisions shall be in writing and shall state the reasons for the adverse decision.

(3) The SFD may decline to act on an application for issuing, renewing, transferring, or registering a limited entry permit and will notify the applicant, if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(f) *Initial issuance.* (1) The SFD will issue limited entry permits.

(2) In order to receive a final decision on a limited entry permit application before January 1, 2000, an applicant must submit the application to the SFD on or before February 14, 2000.

(3) A separate, complete, and accurate application form, accompanied by any required supporting documentation and the appropriate fee, must be submitted for each vessel for which a limited entry permit is sought.

(4) Upon receipt of an incomplete or improperly executed application, the SFD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered void.

(5) The SFD may request further documentation before acting on an application.

(6) The SFD will not accept applications for a limited entry permit after July 1, 2000.

(g) *Appeals.* (1) Any applicant for an initial permit may appeal the initial issuance decision to the Regional Administrator. To be considered by the Regional Administrator, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

(3) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit eligibility criteria set forth in this section and in the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(4) If a hearing is requested or if the Regional Administrator determines that one is appropriate, the Regional

Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant and, at the discretion of the hearing officer, other interested persons may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final action for the agency for the purposes of the APA.

(6) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

§ 660.513 Permit conditions.

(a) A limited entry permit expires on failure to renew the limited entry permit as specified in § 660.515.

(b) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will be registered for use with a particular vessel at the time the permit is issued, renewed, or transferred.

(c) Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1858(g), and 15 CFR part 904, subpart D.

§ 660.514 Transferability.

(a) Upon application by the permit holder, the SFD will process applications for transferring limited entry permits according to this section.

(b) Before January 1, 2001, a limited entry permit may be transferred to a different owner and/or for use with a different vessel. The permit may be transferred only once. No transfer is effective until the permit has been reissued and is in the possession of the new permit holder.

(c) After December 31, 2000, a permit may not be registered for use with a vessel other than the vessel for which it was registered on December 31, 2000, except as follows:

(1) The vessel to which the permit was registered on December 31, 2000 (the replaced vessel), is totally lost, stolen, or scrapped, such that it cannot be used in a federally regulated commercial fishery, and

(2) The replacement vessel to which the permit will be registered is of equal or less net tonnage than the replaced vessel, and

(3) The replaced vessel is owned by the permit holder.

(d) After December 31, 2000, a limited entry permit may not be transferred to a different owner.

§ 660.515 Renewal of limited entry permits.

(a) Each limited entry permit must be renewed by January 1 of even numbered years.

(b) The SFD will send notices to renew limited entry permits to the most recent address of the permit holder.

(c) The permit owner must provide SFD with notice of any address change within 15 days of the change.

(d) The permit holder must submit applications for renewal of a permit on forms available from the SFD.

(e) The permit owner is responsible for renewing a limited entry permit.

(f) An expired permit cannot be used to fish for CPS in the limited entry fishery.

§ 660.516 Exempted fishing.

(a) *General.* In the interest of developing an efficient and productive fishery for CPS, the Regional Administrator may issue exempted fishing permits (EFP) for the harvest of CPS that otherwise would be prohibited.

(b) No exempted fishing for CPS may be conducted unless authorized by an

EFP issued for the participating vessel in accordance with the criteria and procedures specified in §600.745 of this chapter.

§660.517 Framework for revising regulations.

(a) *General.* NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in Amendment 8 to the FMP.

(b) *Annual actions.* Annual specifications are developed and implemented according to §660.508.

(c) *Routine management measures.* Consistent with section. 2.1 of Amendment 8 to the FMP, management measures designated as routine may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the FEDERAL REGISTER.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework measures in section 2 of Amendment 8 to the FMP and will be published in the FEDERAL REGISTER.

FIGURE 1 to Part **660, Subpart I**—Existing California Area Closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional Catalina Channel foreign vessel closure (outlined by dashed lines)

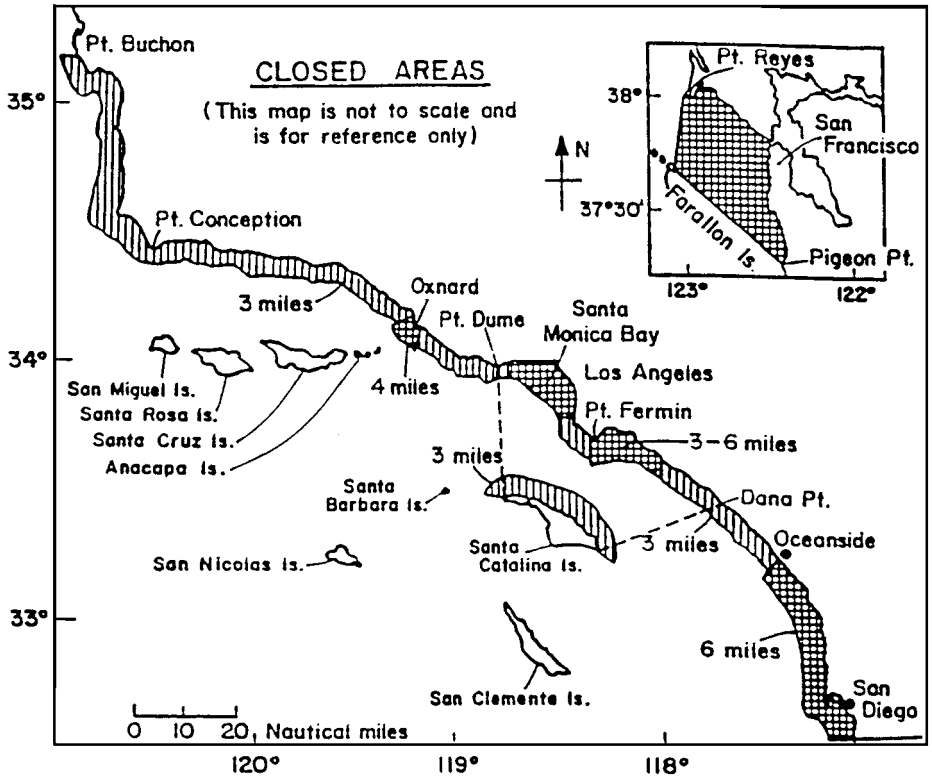


TABLE 1 TO PART 660—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota	Number of years	Gear restriction
Makapuu	E	P—2,000 kg	2	S
		G—600 kg	2	S
		B—600 kg	2	S
Ke-ahole Point	C	P—67 kg	1	S
		G—20 kg	1	S
		B—17 kg	1	S
Kaena Point	C	P—67 kg	1	S
		G—20 kg	1	S
		B—17 kg	1	S
Brooks Bank	C	P—17 kg	1	N
		G—133 kg	1	N
		B—111 kg	1	N
180 Fathom Bank	C	P—222 kg	1	N
		G—67 kg	1	N
		B—56 kg	1	N
Westpac Bed	R	Zero (0 kg)		
Hawaii, American Samoa, Guam, U.S. Pacific Island possessions.		X—1,000 kg (all species combined except black corals) per area.	1	N

Notes:
1. Types of corals: P=Pink G=Gold B=Bamboo.
2. There are no restrictions under this part on the harvest of black corals, except the data submission requirements (§ 660.3). State regulations on black coral harvesting are not superseded by this part.
3. Only ⅕ of the indicated amount is allowed if nonselective gear is used; that is, the nonselective harvest will be multiplied by 5 and counted against the quota. If both selective and nonselective methods are used, the bed will be closed when S+5N=Q, where S=selective harvest amount, N=nonselective harvest amount and Q=total harvest quota, for any single species on that bed.
4. Only selective gear may be used in the EEZ seaward of the main Hawaiian Islands; i.e., south and east of a line midway between Nihoa and Niihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.
5. S=Selective gear only; N=Nonselective or selective gear.
6. No authorized fishing for coral in refugia.

TABLE 2 TO PART 660—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS

Vessel length	Capacity rating
<20	1.00
21	1.13
22	1.27
23	1.42
24	1.58
25	1.75
26	1.93
27	2.12
28	2.32
29	2.53
30	2.76
31	2.99
32	3.24
33	3.50
34	3.77
35	4.05
36	4.35
37	4.66
38	4.98
39	5.31
40	5.66
41	6.02
42	6.39
43	6.78
44	7.18
45	7.59
46	8.02
47	8.47
48	8.92
49	9.40
50	9.88
51	10.38

TABLE 2 TO PART 660—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
52	10.90
53	11.43
54	11.98
55	12.54
56	13.12
57	13.71
58	14.32
59	14.95
60	15.59
61	16.25
62	16.92
63	17.61
64	18.32
65	19.04
66	19.78
67	20.54
68	21.32
69	22.11
70	22.92
71	23.74
72	24.59
73	25.45
74	26.33
75	27.23
76	28.15
77	29.08
78	30.04
79	31.01
80	32.00
81	33.01
82	34.04
83	35.08

TABLE 2 TO PART 660—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
84	36.15
85	37.24
86	38.34
87	39.47
88	40.61
89	41.77
90	42.96
91	44.16
92	45.38
93	46.63
94	47.89
95	49.17
96	50.48
97	51.80
98	53.15
99	54.51
100	55.90
101	57.31
102	58.74
103	60.19
104	61.66
105	63.15
106	64.67
107	66.20
108	67.76
109	69.34
110	70.94
111	72.57
112	74.21
113	75.88
114	77.57
115	79.28
116	81.02
117	82.77
118	84.55
119	86.36
120	88.18
121	90.03
122	91.90
123	93.80
124	95.72
125	97.66
126	99.62
127	101.61
128	103.62
129	105.66
130	107.72
131	109.80
132	111.91
133	114.04
134	116.20
135	118.38
136	120.58
137	122.81
138	125.06
139	127.34
140	129.64
141	131.97
142	134.32
143	136.70
144	139.10
145	141.53
146	143.98
147	146.46
148	148.96
149	151.49
150	154.05
151	154.68
152	155.31

TABLE 2 TO PART 660—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
153	155.94
154	156.57
155	157.20
156	157.83
157	158.46
158	159.10
159	159.73
160	160.36
161	160.99
162	161.62
163	162.25
164	162.88
165	163.51
166	164.14
167	164.77
168	165.41
169	166.04
170	166.67
171	167.30
172	167.93
173	168.56
174	169.19
175	169.82
176	170.45
177	171.08
178	171.72
179	172.35
180	172.98
181	173.61
182	174.24
183	174.87
184	175.50
185	176.13
186	176.76
187	177.40
188	178.03
189	178.66
190	179.29
191	179.92
192	180.55
193	181.18
194	181.81
195	182.44
196	183.07
197	183.71
198	184.34
199	184.97
200	185.60
201	186.23
202	186.86
203	187.49
204	188.12
205	188.75
206	189.38
207	190.02
208	190.65
209	191.28
210	191.91
211	192.54
212	193.17
213	193.80
214	194.43
215	195.06
216	195.69
217	196.33
218	196.96
219	197.59
220	198.22
221	198.85

TABLE 2 TO PART 660—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
222	199.48
223	200.11
224	200.74
225	201.37
226	202.01
227	202.64
228	203.27
229	203.90
230	204.53
231	205.16
232	205.79
233	206.42
234	207.05
235	207.68
236	208.32
237	208.95
238	209.58
239	210.21
240	210.84
241	211.47
242	212.10
243	212.73
244	213.36
245	213.99
246	214.63
247	215.26
248	215.89
249	216.52
250	217.15
251	217.78
252	218.41
253	219.04
254	219.67
255	220.30
256	220.94
257	221.57
258	222.20
259	222.83
260	223.46
261	224.09
262	224.72
263	225.35
264	225.98
265	226.61
266	227.25
267	227.88
268	228.51
269	229.14
270	229.77
271	230.40
272	231.03
273	231.66
274	232.29
275	232.93
276	233.56
277	234.19
278	234.82
279	235.45
280	236.08
281	236.71
282	237.34
283	237.97
284	238.60
285	239.24
286	239.87
287	240.50
288	241.13
289	241.76
290	242.39

TABLE 2 TO PART 660—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
291	243.02
292	243.65
293	244.28
294	244.91
295	245.55
296	246.18
297	246.81
298	247.44
299	248.07
300	248.70
301	249.33
302	249.96
303	250.59
304	251.22
305	251.86
306	252.49
307	253.12
308	253.75
309	254.38
310	255.01
311	255.64
312	256.27
313	256.90
314	257.54
315	258.17
316	258.80
317	259.43
318	260.06
319	260.69
320	261.32
321	261.95
322	262.58
323	263.21
324	263.85
325	264.48
326	265.11
327	265.74
328	266.37
329	267.00
330	267.63
331	268.26
332	268.89
333	269.52
334	270.16
335	270.79
336	271.42
337	272.05
338	272.68
339	273.31
340	273.94
341	274.57
342	275.20
343	275.83
344	276.47
345	277.10
346	277.73
347	278.36
348	278.99
349	279.62
350	280.25
351	280.88
352	281.51
353	282.14
354	282.78
355	283.41
356	284.04
357	284.67
358	285.30
359	285.93

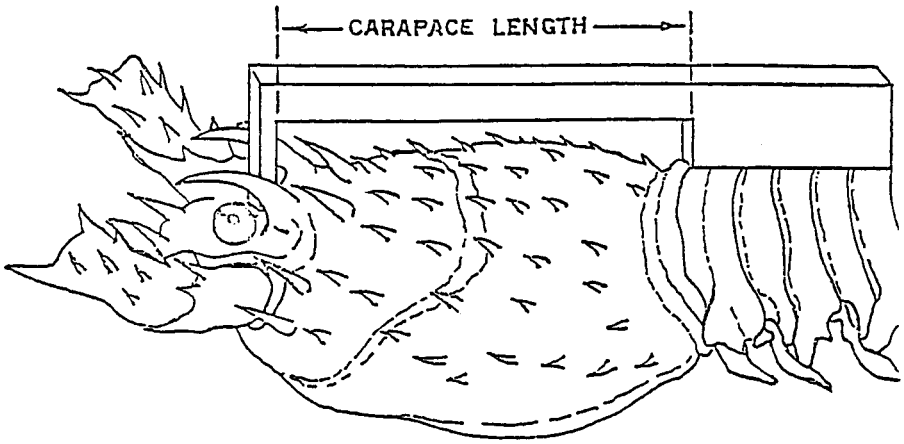
TABLE 2 TO PART 660—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
360	286.56
361	287.19
362	287.82
363	288.46
364	289.09
365	289.72
366	290.35
367	290.98
368	291.61
369	292.24
370	292.87
371	293.50
372	294.13
373	294.77
374	295.40
375	296.03
376	296.66
377	297.29
378	297.92
379	298.55
380	299.18

TABLE 2 TO PART 660—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

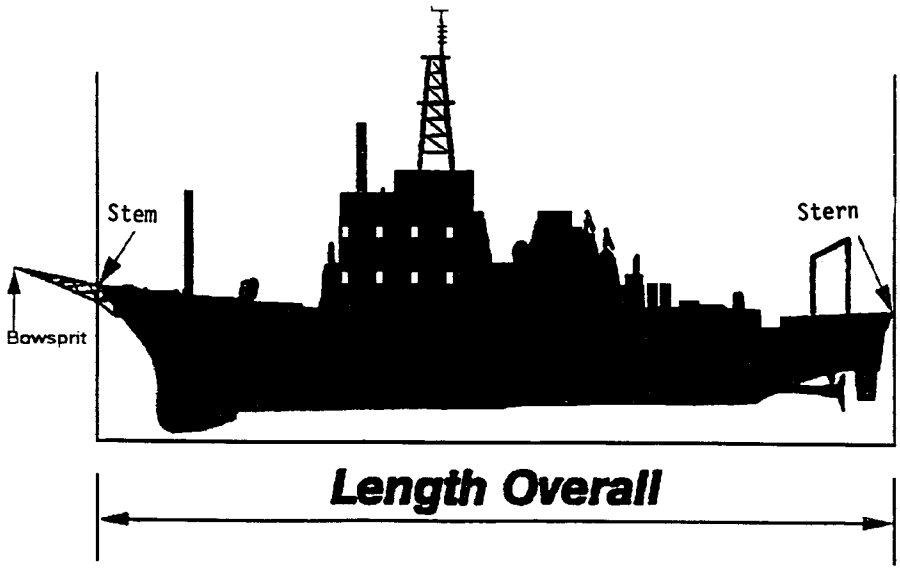
Vessel length	Capacity rating
381	299.81
382	300.44
383	301.08
384	301.71
385	302.34
386	302.97
387	303.60
388	304.23
389	304.86
390	305.49
391	306.12
392	306.75
393	307.39
394	308.02
395	308.65
396	309.28
397	309.91
398	310.54
399	311.17
>400	311.80

FIGURE 1 to Part 660—Carapace Length of Lobsters



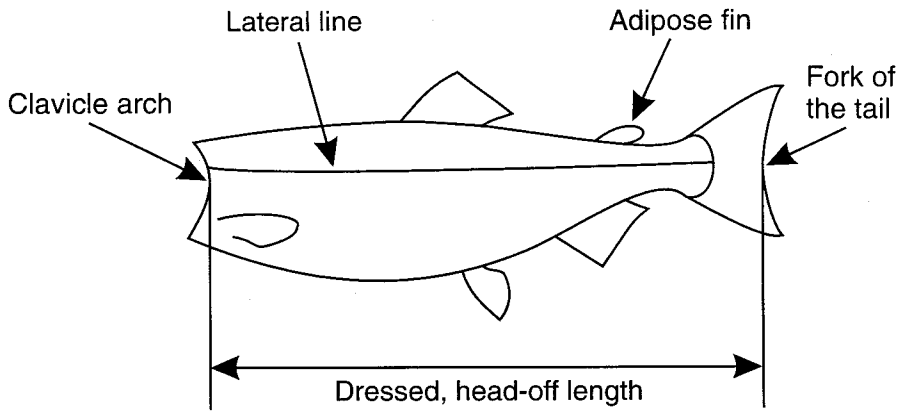
Carapace Length of Lobsters

FIGURE 2 to Part 660—Length of Longline Vessel



Length of Longline Vessel

FIGURE 3 to Part 660—Dressed, Head-off Length of Salmon



Dressed, Head-off Length of Salmon

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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AUTHORITY: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

SOURCE: 61 FR 31230, June 19, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 679 appear at 61 FR 56438, Nov. 1, 1996, and 62 FR 2047, Jan. 15, 1997.

Subpart A—General

§ 679.1 Purpose and scope.

Regulations in this part were developed by the Council under the Magnuson-Stevens Act. Along with part 600 of this chapter, these regulations implement the following:

(a) *Fishery Management Plan for Groundfish of the Gulf of Alaska.* (1) Regulations in this part govern commercial fishing for groundfish in the GOA by vessels of the United States (see subparts A, B, D, and E of this part).

(2) The following State of Alaska regulations are not preempted by this part for vessels regulated under this part fishing for demersal shelf rockfish in the Southeast Outside District, and which are registered under the laws of the State of Alaska: 5 AAC 28.110, fishing seasons; 5 AAC 28.130, gear; 5 AAC 28.160, harvest guidelines; 5 AAC 28.190, harvest of bait by commercial permit holders.

(b) *Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.* Regulations in

this part govern commercial fishing for groundfish in the BSAI by vessels of the United States (see subparts A, B, C, D, and E of this part).

(c) [Reserved]

(d) *IFQ Program for sablefish and halibut.* The IFQ management plan for the commercial fisheries that use fixed gear to harvest sablefish and halibut (see subparts A, B, D, and E of this part).

(1) *Sablefish.* (i) Regulations in this part govern commercial fishing for sablefish by vessels of the United States:

(A) Using fixed gear within that portion of the GOA and the BSAI over which the United States exercises exclusive fishery management authority; and

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that such fishing is conducted by persons who have been issued permits under §679.4.

(ii) Regulations in this part do not govern commercial fishing for sablefish in Prince William Sound or under a State of Alaska limited entry program.

(2) *Halibut.* Regulations in this part govern commercial fishing for halibut by vessels of the United States using fixed gear, as that term is defined in 50 CFR 679.2, in and off of Alaska.

(e) *Western Alaska CDQ Program.* The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.

(f) *Groundfish Observer Program* (Applicable through December 31, 1997). Regulations in this part govern elements of the Groundfish Observer Program for the BSAI groundfish and GOA groundfish fisheries under the Council's authority (see subpart E of this part).

(g) *Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area.* Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, including regulations superseding State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutian Islands Area EEZ that are determined to be inconsistent with the FMP (see subparts A, B, and E of this part).

(h) *Fishery Management Plan for the Scallop Fishery off Alaska.* (1) Regulations in this part govern commercial fishing for scallops in the Federal waters off Alaska by vessels of the United States (see subpart A of this part).

(2) State of Alaska laws and regulations that are consistent with the FMP and with the regulations in this part apply to vessels of the United States that are fishing for scallops in the Federal waters off Alaska.

(i) *Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude (Salmon FMP).* Regulations in this part govern fishing for salmon by fishing vessels of the United States in the EEZ seaward of Alaska east of 175° E. long., referred to as the High Seas Salmon Management Area.

(j) *License Limitation Program.* (1) Regulations in this part implement the license limitation program for the commercial groundfish fisheries in the EEZ off Alaska and for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area.

(2) Regulations in this part govern the commercial fishing for license limitation groundfish by vessels of the United States using authorized gear within the GOA and the BSAI and the commercial fishing for crab species by vessels of the United States using authorized gear within the Bering Sea and Aleutian Islands Area.

(k) This part also governs payment and collection of the loan, under the American Fisheries Act (AFA), the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

[61 FR 31230, June 19, 1996, as amended at 61 FR 38103, July 23, 1996; 61 FR 56429, Nov. 1, 1996; 62 FR 2045, Jan. 15, 1997; 62 FR 19687, Apr. 23, 1997; 62 FR 59298, Nov. 3, 1997; 63 FR 30398, June 4, 1998; 63 FR 38502, July 17, 1998; 63 FR 52652, Oct. 1, 1998; 64 FR 3652, Jan. 25, 1999; 65 FR 5281, Feb. 3, 2000; 65 FR 45317, July 21, 2000]

§ 679.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in part 600 of this chapter, the terms used in this part have the following meanings:

Active/inactive periods—(1) *Active periods*—(i) *Catcher vessel.* An active period for a catcher vessel means a period of time when the catcher vessel is in a reporting area (except 300, 400, 550, or 690) or gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location.

(ii) *Shoreside processor, mothership, catcher/processor, and buying station.* An active period for a shoreside processor, mothership, catcher/processor, and buying station means a period of time when checked in.

(2) *Inactive periods*—(i) *Catcher vessel.* An inactive period for a catcher vessel means any period that does not qualify as an active period.

(ii) *Shoreside processor, mothership, catcher/processor, or buying station.* An inactive period for a shoreside processor, mothership, catcher/processor, or buying station means a period of time when not checked in.

Adequate evidence, for purposes of subpart E of this part, means information sufficient to support the reasonable belief that a particular act or omission has occurred.

ADF&G means the State of Alaska Department of Fish and Game.

ADF&G fish ticket number means a nine-digit number designated by one alphabet letter (i.e., G = groundfish), two numbers that identify the year (i.e., 98), followed by six numbers.

Affiliates, for purposes of subpart E of this part, means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the decertification, suspension, or proposed decertification of an observer contractor that has the same or similar management, ownership, or principal employees as the observer contractor that was decertified, suspended, or proposed for decertification.

Alaska local time (A.l.t.) means the current Alaska time, either daylight savings time or standard time.

Alaska State waters means waters adjacent to the State of Alaska and shoreward of the EEZ off Alaska.

Aleutian Islands Subarea (AI) of the BSAI means that portion of the EEZ contained in Statistical Areas 541, 542, and 543 (see Figure 1 to this part).

American Fisheries Act (AFA) means Title II—Fisheries Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105–277).

Ancillary product means a product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

Area endorsement means a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the designated area, subarea, or district. Area endorsements, which are inclusive of, but not necessarily the same as, management areas, subareas, or districts defined in this part, are as follows:

(1) Aleutian Islands area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Aleutian Islands Subarea;

(2) Bering Sea area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Bering Sea Subarea;

(3) Central Gulf area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Central Area of the Gulf of Alaska and the West Yakutat District;

(4) Southeast Outside area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Southeast Outside District; and

(5) Western Gulf area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Western Area of the Gulf of Alaska.

Area/species endorsement means a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for the designated crab species in Federal waters in the designated area. Area/species endorsements for crab species licenses are as follows:

(1) Aleutian Islands brown king in waters with an eastern boundary the longitude of Scotch Cap Light (164° 44′ W. long.), a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of a line from the latitude of Cape Sarichef (54° 36′ N. lat.) westward to 171° W. long., then north to 55° 30′ N. lat., then west to the U.S.-Russian Convention line of 1867.

(2) Aleutian Islands red king in waters with an eastern boundary the longitude of Scotch Cap Light (164° 44′ W. long.), a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of a line from the latitude of Cape Sarichef (54° 36′ N. lat.) westward to 171° W. long., then north to 55° 30′ N. lat., and then west to the U.S.-Russian Convention line of 1867.

(3) Bristol Bay red king in waters with a northern boundary of 58° 39′ N. lat., a southern boundary of 54° 36′ N. lat., and a western boundary of 168° W. long. and including all waters of Bristol Bay.

(4) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* in Pacific Ocean and Bering Sea waters east of the U.S.-Russian Convention Line of 1867, excluding all Pacific Ocean waters east of a boundary line extending south (180°) from Scotch Cap Light.

(5) Norton Sound red king and Norton Sound blue king in waters with a western boundary of 168° W. long., a southern boundary of 61° 49′ N. lat., and a northern boundary of 65° 36′ N. lat.

(6) Pribilof red king and Pribilof blue king in waters with a northern boundary of 58° 39′ N. lat., an eastern boundary of 168° W. long., a southern boundary line from 54° 36′ N. lat., 168° W. long., to 54° 36′ N. lat., 171° W. long., to 55° 30′ N. lat., 171° W. long., to 55° 30′ N. lat., 173° 30′ E. lat., and then westward to the U.S.-Russian Convention line of 1867.

(7) St. Matthew blue king in waters with a northern boundary of 61° 49′ N. lat., a southern boundary of 58° 39′ N. lat., and a western boundary of the U.S.-Russian Convention line of 1867.

Authorized distributor means a tax-exempt organization authorized by NMFS to coordinate the processing, storage, transportation, and distribution of salmon taken as bycatch in the groundfish trawl fisheries to tax-exempt hunger relief agencies, food bank networks, and food bank distributors.

Authorized fishing gear (see also §679.24 for gear limitations) means trawl gear, fixed gear, longline gear, pot gear, and nontrawl gear as follows:

(1) *Fixed gear* means:

(i) For sablefish harvested from any GOA reporting area, all longline gear and, for purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.

(ii) For sablefish harvested from any BSAI reporting area, all hook-and-line gear and all pot gear.

(iii) For halibut harvested from any IFQ regulatory area, all fishing gear comprised of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.

(2) *Hand troll gear* means one or more lines, with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically powered device or attachment.

(3) *Handline gear* means a hand-held line, with one or more hooks attached, that may only be operated manually.

(4) *Hook-and-line gear* means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device.

(5) *Jig gear* means a single, non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device.

(6) *Longline gear* means hook-and-line, jig, troll, and handline or the taking of fish by means of such a device.

(7) *Longline pot* means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

(8) *Nonpelagic trawl* means a trawl other than a pelagic trawl.

(9) *Nontrawl gear* means pot and longline gear.

(10) *Pelagic trawl gear* means a trawl that:

(i) Has no discs, bobbins, or rollers;

(ii) Has no chafe protection gear attached to the footrope or fishing line;

(iii) Except for the small mesh allowed under paragraph (10)(ix) of this definition:

(A) Has no mesh tied to the fishing line, headrope, and breast lines with less than 20 inches (50.8 cm) between knots and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, headrope, and breast lines and extending passed the fishing circle for a distance equal to or greater than one half the vessel's LOA; or

(B) Has no parallel lines spaced closer than 64 inches (162.6 cm) from all points on the fishing line, headrope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm) extending aft for a distance equal to or greater than one-half the vessel's LOA;

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (10)(iii) of this definition for a distance equal to or greater than one-half the vessel's LOA;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (10)(iii) and (iv) of this definition;

(vi) Has no flotation other than floats capable of providing up to 200 lb (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(vii) Has no more than one fishing line and one footrope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle;

(viii) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or a net-sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(ix) May have small mesh within 32 ft (9.8 m) of the center of the headrope as needed for attaching instrumentation (*e.g.*, net-sounder device); and

(x) May have weights on the wing tips.

(11) *Pot gear* means a portable structure designed and constructed to capture and retain fish alive in the water. This gear type includes longline pot and pot-and-line gear. Each groundfish pot must comply with the following:

(i) *Biodegradable panel.* Each pot used to fish for groundfish must be equipped with a biodegradable panel at least 18 inches (45.72 cm) in length that is parallel to, and within 6 inches (15.24 cm) of, the bottom of the pot, and that is sewn up with untreated cotton thread of no larger size than No. 30.

(ii) *Tunnel opening.* Each pot used to fish for groundfish must be equipped with rigid tunnel openings that are no wider than 9 inches (22.86 cm) and no higher than 9 inches (22.86 cm), or soft tunnel openings with dimensions that are no wider than 9 inches (22.86 cm).

(12) *Pot-and-line gear* means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device.

(13) *Power troll gear* means one or more lines, with hooks or lures attached, drawn through the water behind a moving vessel, and originating from a power gurdy or power-driven spool fastened to the vessel, the extension or retraction of which is directly to the gurdy or spool.

(14) *Trawl gear* means a cone or funnel-shaped net that is towed through the water by one or more vessels. For purposes of this part, this definition includes, but is not limited to, beam trawls (trawl with a fixed net opening utilizing a wood or metal beam), otter trawls (trawl with a net opening controlled by devices commonly called otter doors), and pair trawls (trawl dragged between two vessels) and is further described as pelagic or non-pelagic trawl.

(15) *Troll gear* means one or more lines with hooks or lures attached drawn through the water behind a moving vessel. This gear type includes hand troll and power troll gear.

Basis species means any species or species group that is open to directed fishing that the vessel is authorized to harvest.

Bering Sea and Aleutian Islands Area, for purposes of regulations governing the commercial King and Tanner crab fisheries, means those waters of the EEZ off the west coast of Alaska lying south of Point Hope (68°21′ N. lat), and

extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164°44′36″ W. long).

Bering Sea and Aleutian Islands Management Area (BSAI), for purposes of regulations governing the groundfish fisheries, means the Bering Sea and Aleutian Islands subareas (see Figure 1 to this part).

Bering Sea Subarea of the BSAI means that portion of the EEZ contained in Statistical Areas 508, 509, 512, 513, 514, 516, 517, 518, 519, 521, 523, 524, and 530 (see Figure 1 to this part).

Bled codend means a form of discard by vessels using trawl gear wherein some or all of the fish are emptied into the sea from the net before fish are brought fully on board.

Bogoslof District means that part of the Bering Sea Subarea contained in Statistical Area 518 (see Figure 1 to this part).

Breast line means the rope or wire running along the forward edges of the side panels of a net, or along the forward edge of the side rope in a rope trawl.

Briefing means a short (usually 2–4 day) training session that observers must complete to fulfill certification requirements.

Buying station means a tender vessel or land-based entity that receives unprocessed groundfish from a vessel for delivery to a shoreside processor or mothership and that does not process those fish.

Bycatch Limitation Zone 1 (Zone 1) means that part of the Bering Sea Subarea that is contained within the boundaries of Statistical Areas 508, 509, 512, and 516 (see Figure 1 to this part).

Bycatch Limitation Zone 2 (Zone 2) means that part of the Bering Sea Subarea that is contained within the boundaries of Statistical Areas 513, 517, and 521 (see Figure 1 to this part).

Bycatch rate means:

(1) For purposes of §679.21(f) with respect to halibut, means the ratio of the total round weight of halibut, in kilograms, to the total round weight, in metric tons, of groundfish for which a TAC has been specified under §679.20 while participating in any of the fisheries defined under §679.21(f).

(2) For purposes of §679.21(f) with respect to red king crab, means the ratio of number of red king crab to the total round weight, in metric tons, of BSAI groundfish for which a TAC has been specified under §679.20 while participating in the BSAI yellowfin sole and BSAI ''other trawl'' fisheries, as defined under §679.21(f).

Bycatch species means any species or species group for which a maximum retainable bycatch amount is calculated.

Catch (see 50 CFR 600.10.)

Catcher/processor means:

(1) *With respect to groundfish recordkeeping and reporting,* a vessel that is used for catching fish and processing that fish.

(2) *With respect to subpart E of this part,* a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

Catcher/processor vessel designation means, for purposes of the license limitation program, a license designation that authorizes the license holder:

(1) Designated on a groundfish license to deploy a vessel to conduct directed fishing for license limitation groundfish and process license limitation groundfish on that vessel or to conduct only directed fishing for license limitation groundfish; or

(2) Designated on a crab species license to deploy a vessel to conduct directed fishing for crab species and process crab species on that vessel or to conduct only directed fishing for crab species.

Catcher vessel means a vessel that is used for catching fish and that does not process fish on board.

Catcher vessel designation means, for purposes of the license limitation program, a license designation that authorizes the license holder:

(1) Designated on a groundfish license to deploy a vessel to conduct directed fishing for, but not process, license limitation groundfish on that vessel; or

(2) Designated on a crab species license to deploy a vessel to conduct directed fishing for, but not process, crab species on that vessel.

Catcher Vessel Operational Area (CVOA) (see Figure 2 to this part and §679.22(a)(5)).

CBL means crab bycatch limit.

CDQ allocation means a percentage of a CDQ reserve specified under §679.31

that is assigned to a CDQ group when NMFS approves a proposed CDP.

CDQ group means a qualified applicant with an approved CDP.

CDQ delivery number means a sequential number assigned by the catcher vessel operator that uniquely identifies each CDQ delivery. The sequence of CDQ delivery numbers begins with the first fishing activity under a multispecies CDQ plan, and the number is incrementally adjusted by one with each delivery of fish.

CDQ number or group number means a number assigned to a CDQ group by NMFS that must be recorded in all logbooks and all reports submitted by the CDQ group or by vessels and processors catching CDQ or PSQ under an approved CDP.

CDQ project means any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

CDQ representative means the individual who is the official contact for NMFS regarding all matters relating to a CDQ group's activities.

CDQ species means any species or species group that has been assigned to a CDQ reserve under § 679.31.

Central Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 542 (see Figure 1 to this part).

Central Gulf or GOA Central Regulatory Area means that portion of the GOA EEZ that is contained in Statistical Areas 620 and 630 (see Figure 3 to this part).

Chief, RAM Division means Chief of the Restricted Access Management Division, NMFS, Alaska Region.

Chinook Salmon Savings Area of the BSAI (See § 679.21(e)(7)(viii) and Figure 8 to this part.)

Chum Salmon Savings Area of the BSAI CVOA (See § 679.21(e)(7)(vii) and Figure 9 to this part.)

Civil judgment, for purposes of subpart E of this part, means a judgment or finding of a civil offense by any court of competent jurisdiction.

Clearing officer means a NMFS special agent, a NMFS fishery enforcement officer, or a NMFS enforcement aide who performs the function of clearing vessels at one of the primary ports listed in § 679.5(l)(3)(viii).

Commercial fishing, for purposes of the High Seas Salmon Fishery, means fishing for fish for sale or barter.

Commissioner of ADF&G means the principal executive officer of ADF&G.

Community Development Plan (CDP) means a business plan for the economic and social development of a specific Western Alaska community or group of communities under the CDQ program at § 679.30.

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program.

Conviction, for purposes of subpart E of this part, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

C. Opilio Crab Bycatch Limitation Zone (COBLZ) (see §679.21(e) and Figure 13 to this part.

Council means North Pacific Fishery Management Council.

Daily reporting period or day is the period from 0001 hours, A.l.t., until the following 2400 hours, A.l.t.

Crab species means all crab species covered by the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, including, but not limited to, red king crab (*Paralithodes camtschatica*), blue king crab (*Paralithodes platypus*), brown or golden king crab (*Lithodes aequispina*), scarlet or deep sea king crab (*Lithodes couesi*), Tanner or bairdi crab (*Chionoecetes*

bairdi), opilio or snow crab (*Chionoecetes opilio*), grooved Tanner crab (*Chionoecetes tanneri*), and triangle Tanner crab (*Chionoecetes angulatus*).

Crab species license means a license issued by NMFS that authorizes the license holder designated on the license to deploy a vessel to conduct directed fishing for crab species.

Debriefing means the post-deployment process that includes a one-on-one interview with NMFS staff, a NMFS preliminary data review, observer completion of all data corrections noted, observer preparation of affidavits and reports, and completion of tasks related to biological specimens or special projects.

Decertification, as used in §679.50(j), means action taken by a decertifying official under §679.50(j)(7) to revoke indefinitely certification of observers or observer contractors under this section; an observer or observer contractor whose certification is so revoked is decertified.

Decertifying official, for purposes of subpart E of this part, means a designee authorized by the Regional Administrator to impose decertification.

Deep water flatfish (see annual final specifications published in the FEDERAL REGISTER pursuant to §679.20(c).)

Deployment means the period between an observer's arrival at the point of embarkation and the date the observer disembarks for travel to debriefing.

Direct financial interest means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or observer contractor duties.

Directed fishing means:

(1) *With respect to groundfish recordkeeping and reporting*, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under §679.20.

(2) *With respect to license limitation groundfish species*, directed fishing as defined in paragraph (1) of this definition, or, with respect to license limitation crab species, the catching and retaining of any license limitation crab species.

(3) (*Applicable through January 16, 2001*) *With respect to the harvest of groundfish by AFA catcher/processors and AFA catcher vessels*, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under §679.20.

Discard (see §600.10.)

Dockside sale means the transfer of IFQ halibut or IFQ sablefish from the person who harvested it to individuals for personal consumption, and not for resale.

Documented harvest means a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting.

Donut Hole means the international waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).

Eastern Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 541 (see Figure 1 to this part).

Eastern Gulf or GOA Eastern Regulatory Area means the Reporting Areas 649 and 659 and that portion of the GOA EEZ that is contained in Statistical Areas 640 and 650 (see Figure 3 to this part).

Eligible applicant means a qualified person who submitted an application during the application period announced by NMFS and:

(1) Who owned a vessel on June 17, 1995, from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in §679.4(k)(4) and (k)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) To whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species

were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; or

(3) Who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery at the time he or she made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

(4) Who is an individual that can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794(a).

Eligible community means a community that is listed in Table 7 to this part or that meets all of the following requirements:

(1) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92–203) to be a native village.

(3) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(4) That has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

Federal waters means waters within the EEZ off Alaska.

Fish product (See groundfish product.)

Fish product weight means the weight of the fish product in pounds or to at least the nearest thousandth of a metric ton (0.001 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individual fresh or frozen fish. The weight of a production unit is the average weight of representative samples of the product, and, for fish other than fresh fish, may include additives or water but not packaging. Any allowance for water added cannot exceed 5 percent of the gross product weight (fish, additives, and water).

Fishermen means persons who catch, take, or harvest fish.

Fishing circle means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

Fishing day means a 24-hour period, from 0001 hours A.l.t. through 2400 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached.

Fishing month refers to a time period calculated on the basis of weekly reporting periods as follows: Each fishing month begins on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and ends on the last day of the last weekly reporting period that has at least 4 days in that same calendar month. Dates of each fishing month will be announced in the FEDERAL REGISTER published under § 679.21(f)(5).

Fishing trip means: (1) *Retention requirements (MRB, IR/IU, and pollock roe stripping).* With respect to retention requirements of MRB, IR/IU, and pollock roe stripping, an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing

of groundfish is begun or resumed in an area until:

(i) The effective date of a notification prohibiting directed fishing in the same area under §679.20 or §679.21;

(ii) The offload or transfer of all fish or fish product from that vessel;

(iii) The vessel enters or leaves an area where a different directed fishing prohibition applies;

(iv) The vessel begins fishing with different type of authorized fishing gear; or

(v) The end of a weekly reporting period, whichever comes first.

(2) *IFQ program.* With respect to the IFQ program, the period beginning when a vessel operator commences harvesting IFQ species and ending when the vessel operator lands any species.

(3) *Groundfish observer program.* With respect to subpart E of this part, one of the following periods:

(i) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a monthership, a weekly reporting period during which one or more fishing days occur.

(ii) For a catcher vessel used to deliver fish to other than a mothership, the time period during which one or more fishing days occur, that starts on the day when fishing gear is first deployed and ends on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

Fishing year means 0001 hours, A.l.t., on January 1, through 2400 hours, A.l.t., on December 31 (see §679.23).

Fixed gear sablefish CDQ reserve means 20 percent of the sablefish fixed gear TAC for each subarea in the BSAI for which a sablefish TAC is specified under §679.20(b)(1)(iii)(B). See also §679.31(b).

Food bank distributor means a tax-exempt organization with the primary purpose of distributing food resources to hunger relief agencies.

Food bank network means a tax-exempt organization with the primary purpose of coordinating receipt and delivery of food resources to its member food bank distributors or hunger relief agencies.

Footrope means a chain or wire rope attached to the bottom front end of a trawl and attached to the fishing line.

Forage fish means all species of the following families (see also Table 2 to this part):

(1) *Osmeridae* (eulachon, capelin and other smelts),

(2) *Myctophidae* (lanternfishes),

(3) *Bathylagidae* (deep-sea smelts),

(4) *Ammodytidae* (Pacific sand lance),

(5) *Trichodontidae* (Pacific sandfish),

(6) *Pholidae* (gunnels),

(7) *Stichaeidae* (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),

(8) *Gonostomatidae* (bristlemouths, lightfishes, and anglemouths), and

(9) The Order *Euphausiacea* (krill).

Gear deployment means:

(1) *For trawl gear:* Where the trawl gear reaches the fishing level and begins to fish.

(2) *For longline gear:* Where the gear enters the water.

(3) *For pot gear:* Where the first pot enters the water.

Gear retrieval means:

(1) For trawl gear: Where retrieval of trawl cable commences.

(2) For jig/troll gear: Where the jig/troll gear leaves the water.

(3) For hook-and-line or longline pot gear: Where the last hook-and-line or longline pot gear of a set leaves the water, regardless of where the majority of the haul or set took place.

(4) For pot-and-line gear: Where the last pot of a set leaves the water.

Groundfish means target species and the ''other species'' category, specified annually pursuant to §679.20(a)(2).

Groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species, but that does not meet the definition of halibut CDQ fishing.

Groundfish CDQ fishing (applicable through December 31, 1998) means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or PSQ species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ.

Groundfish license means a license issued by NMFS that authorizes the license holder designated on the license to deploy a vessel to conduct directed

fishing for license limitation groundfish.

Groundfish product or fish product means any species product listed in Tables 1 and 2 to this part, excluding the prohibited species listed in Table 2 to this part.

Gulf of Alaska (GOA) means that portion of the EEZ contained in Statistical Areas 610, 620, 630, 640, and 650 (see Figure 3 to this part).

Halibut means Pacific halibut (*Hippoglossus stenolepis*).

Halibut CDQ fishing means the following:

(1) *Catcher vessel*. The following conditions are met at all times:

(i) Halibut CDQ is retained and the weight of halibut CDQ plus halibut IFQ onboard the vessel at any time represents the largest proportion of the retained catch in round weight equivalent onboard the vessel at that time, and

(ii) For catcher vessels less than 60 ft (18.3 m) LOA, the round weight equivalent of non-CDQ groundfish does not exceed the maximum retainable bycatch amounts for these species or species groups as established in § 679.20(e) and (f).

(2) *Catcher/processor*. Halibut CDQ is retained from a set and the weight of halibut CDQ plus halibut IFQ represents the largest proportion of the retained catch in round weight equivalent from that set.

Halibut CDQ reserve means the amount of the halibut catch limit for IPHC regulatory areas 4B, 4C, 4D, and 4E that is reserved for the halibut CDQ program (see § 679.31(b)).

Harvesting or to harvest means the catching and retaining of any fish.

Haul (See gear retrieval.)

Headrope means a rope bordering the top front end of a trawl.

Herring Savings Area means any of three areas in the BSAI presented in Figure 4 (see also § 679.21(e)(7)(v) for additional closure information).

High Seas Salmon Management Area means the portion of the EEZ off Alaska east of 175 degrees E. long. The High Seas Salmon Management Area is divided into a West Area and an East Area:

(1) The *West Area* consists of the waters of the High Seas Salmon Management Area which are west of 143°53′36″ W. long. (Cape Suckling).

(2) The *East Area* consists of the waters of the High Seas Salmon Management Area east of 143°53′36″ W. long.

Hunger relief agency means a tax-exempt organization with the primary purpose of feeding economically disadvantaged individuals free of charge.

Indictment, for purposes of subpart E of this part, means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

Individual means a natural person who is not a corporation, partnership, association, or other such entity.

Individual fishing quota (IFQ) means the annual catch limit of sablefish or halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of sablefish or halibut.

IFQ crew member means any individual who has at least 150 days experience working as part of the harvesting crew in any U.S. commercial fishery, or any individual who receives an initial allocation of QS. For purposes of this definition, ''harvesting'' means work that is directly related to the catching and retaining of fish. Work in support of harvesting, but not directly involved with harvesting, is not considered harvesting crew work. For example, searching for fish, work on a fishing vessel only as an engineer or cook, or work preparing a vessel for a fishing trip would not be considered work of a harvesting crew.

IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted weight for halibut.

IFQ fee liability means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s) by the appropriate IFQ fee percentage.

IFQ fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use to

calculate the IFQ cost recovery fee liability for an IFQ permit holder.

IFQ halibut means any halibut that is harvested with fixed gear in any IFQ regulatory area.

IFQ landing means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish.

IFQ permit holder means the person identified on an IFQ permit, at the time a landing is made, as defined at §679.4(d)(3)(B).

IFQ program means the individual fishing quota program for the fixed gear fisheries for Pacific halibut and sablefish in waters in and off Alaska and governed by regulations under this part.

IFQ registered buyer means the person identified on a registered buyer permit, as defined at §679.4(d)(2).

IFQ regulatory area means:

(1) With respect to IFQ halibut, areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title.

(2) With respect to IFQ sablefish, any of the three regulatory areas in the GOA and any subarea of the BSAI, and all waters of the State of Alaska between the shore and the inshore boundary of such regulatory areas and subareas, except waters of Prince William Sound and areas in which sablefish fishing is managed under a State of Alaska limited entry program.

IFQ retro-payment means the U.S. dollar value of a payment, monetary or non-monetary, made to an IFQ permit holder for the purchase of IFQ halibut or IFQ sablefish landed at some previous time.

IFQ sablefish means any sablefish that is harvested with fixed gear, either in the EEZ off Alaska or in waters of the State of Alaska, by persons holding an IFQ permit, but does not include sablefish harvested in Prince William Sound or under a State of Alaska limited entry program.

IFQ standard ex-vessel value means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

IFQ standard price means a price, expressed in U.S. dollars per IFQ equivalent pound, for landed IFQ halibut and IFQ sablefish determined annually by the Regional Administrator and documented in an IFQ standard price list published by NMFS.

Inshore component in the BSAI (applicable through December 31, 2004) means the following categories that process groundfish harvested in the BSAI:

(1) Shoreside processors, including those eligible under section 208(f) of the American Fisheries Act; and

(2) Vessels less than 125 ft (38.1 m) LOA that process less than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod.

Inshore component in the GOA (applicable through December 31, 2001) means the following three categories of the U.S. groundfish fishery that process groundfish harvested in the BSAI or GOA:

(1) Shoreside processing operations;

(2) Vessels less than 125 ft (38.1 m) LOA that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod; and

(3) Vessels that process pollock or Pacific cod, harvested in a directed fishery for those species, at a single geographic location in Alaska State waters during a fishing year.

IPHC means International Pacific Halibut Commission (see part 300 of chapter III of this title).

IR/IU means the improved retention/improved utilization program set out at §679.27.

IR/IU species means any groundfish species that is regulated by a retention or utilization requirement set out at §679.27.

KIFQ actual ex-vessel value means the U.S. dollar amount of all compensation, monetary or non-monetary, including any IFQ retro-payments received by an IFQ permit holder for the purchase of IFQ halibut or IFQ sablefish landing(s) on his or her permit(s) described in terms of IFQ equivalent pounds.

King crab means red king crab (*Paralithodes camtschatica*), blue king

crab (*P. platypus*), brown (or golden) king crab (*Lithodes aequispina*), and scarlet (or deep sea) king crab (*Lithodes couesi*).

Landing means offloading fish.

Legal landing means a landing in compliance with Federal and state commercial fishing regulations in effect at the time of landing.

Legal landing of halibut or sablefish (see § 679.40(a)(3)(v)).

Legal proceedings, for purposes of subpart E of this part, means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

Length overall (LOA) of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 to this part; see also maximum LOA, original qualifying LOA, and reconstruction).

License holder means the person who is named on a currently valid groundfish license or crab species license.

License limitation groundfish means target species and the ''other species'' category, specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. long. and sablefish managed under the IFQ program are not considered license limitation groundfish.

Limited Access System Administrative Fund (LASAF) means the administrative account used for depositing cost recovery fee payments into the U.S. Treasury as described in the Magnuson-Stevens Act under section 304(d)(2)(C)(i) and established under section 305(h)(5)(B).

Logbook means Daily Cumulative Production Logbook (DCPL), Daily Cumulative Logbook (DCL), or a Daily Fishing Logbook (DFL) required by § 679.5.

Management area means any district, regulatory area, subpart, part, or the entire GOA or BSAI.

Manager, with respect to any shoreside processor or land-based buying station, means the individual responsible for the operation of the shoreside processor operation or land-based buying station.

Managing organization means the organization responsible for managing all or part of a CDP.

Maximum LOA (MLOA) means, with respect to the groundfish and crab license limitation program, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. However, if the vessel was under reconstruction on June 24, 1992, then the basis for the MLOA will be the LOA of the vessel on the date that reconstruction was completed and not June 24, 1992. The following exceptions apply regardless of how the MLOA was determined.

(1) If the vessel's LOA on June 17, 1995, was less than 60 ft (18.3 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was less than 60 ft (18.3 m), then the vessel's MLOA cannot exceed 59 ft (18 m).

(2) If the vessel's LOA on June 17, 1995, was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was greater than or equal to 60 ft (18.3 m) but less 125 ft (38.1 m), then the vessel's MLOA cannot exceed 124 ft (37.8 m).

(3) If the vessel's LOA on June 17, 1995, was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on June 17, 1995, or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on the date reconstruction was completed.

Mothership means:

(1) A vessel that receives and processes groundfish from other vessels; or

(2) With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish.

Nearshore Bristol Bay Trawl Closure Area of the BSAI (See § 679.22(a)(9) and Figure 12 to this part.)

Net-sounder device means a sensor used to determine the depth from the water surface at which a fishing net is operating.

Net weight (IFQ or CDQ halibut only). Net weight of IFQ or CDQ halibut means the weight of a halibut that is gutted, head off, and washed or ice and slime deducted.

Non-allocated or nonspecified species means those fish species, other than prohibited species, for which TAC has not been specified (e.g., grenadier, prowfish, lingcod).

NMFS investigator, for purposes of subpart E of this part, means a designee authorized by the Regional Administrator to conduct investigations under this section.

NMFS Person Identification Number means a unique number assigned by NMFS to any person who applied for, or who has been issued, a certificate, license, or permit under any fishery management program administered by the Alaska Region for purposes of the NMFS/Alaska Region Integrated Regional Data System.

Non-chinook salmon means coho, pink, chum or sockeye salmon.

North Pacific fishery means any commercial fishery in state or Federal waters off Alaska.

Observed or observed data refers to data collected by observers (see §679.21(f)(7) and subpart E of this part).

Observer means any individual that is awarded NMFS certification to serve as an observer under this part, is employed by an observer contractor for the purpose of providing observer services to vessels or shoreside processors under this part, and is acting within the scope of his/her employment.

Observer contractor means any person that is awarded NMFS certification to provide observer services to vessels and shoreside processors under subpart E and who contracts with observers to provide these services.

Observer Program Office means the administrative office of the Groundfish Observer Program located at Alaska Fisheries Science Center (see **ADDRESSES**, part 600).

Official LLP record means the information prepared by the Regional Administrator about vessels that were used to participate in the groundfish and crab fisheries during the qualifying periods for the License Limitation Program (LLP). Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the LLP will have the burden of proving that information submitted in an application that is inconsistent with the official LLP record is correct.

Offshore component in the BSAI (applicable through December 31, 2004) means all vessels not included in the definition of ''inshore component in the BSAI'' that process groundfish in the BSAI.

Offshore component in the GOA (applicable through December 31, 2001) means all vessels not included in the definition of ''inshore component in the GOA'' that process groundfish in the BSAI or GOA.

Optimum yield means:

(1) With respect to the High Seas Salmon Fishery, that amount of any species of salmon which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, as specified in the Salmon FMP.

(2) With respect to the groundfish fisheries, see §679.20(a)(1).

Other flatfish (see annual final specifications published in the FEDERAL REGISTER pursuant to §679.20(c).)

Other gear means gear other than authorized fishing gear.

Other red rockfish (see annual final specifications published in the FEDERAL REGISTER pursuant to §679.20(c); see also ''rockfish'' at §679.2.)

Other rockfish (see annual final specifications published in the FEDERAL REGISTER pursuant to §679.20(c); see also ''rockfish'' at §679.2.)

Other species is a category that consists of groundfish species in each management area that are not specified as target species (see Table 1 of the specifications provided at §679.20(c)).

Person means:

(1) *For IFQ and CDQ Programs and General Usage* the term ''person'' means any individual who is a citizen of the

United States or any corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state, who is a U.S. citizen.

(2) *For High Seas Salmon Fishery permits* issued under § 679.4(h), the term ''person'' excludes any nonhuman entity.

Personal use fishing means, for purposes of the High Seas Salmon Fishery, fishing other than commercial fishing.

Pollock roe means product consisting of pollock eggs, either loose or in sacs or skeins.

Preponderance of the evidence, for purposes of subpart E of this part, means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Primary product means a product, such as fillets, made from each fish, with the highest recovery rate (see Table 1 to this part).

Processing, or *to process,* means the preparation of, or to prepare, fish or crab to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal fisheries permit and that can be used for processing groundfish.

Prohibited species catch (*PSC*) means any of the species listed in § 679.21(b).

Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).

PRR means standard product recovery rate (see Table 3 to this part).

PSD Permit means a permit issued by NMFS to an applicant who qualifies as an authorized distributor for purposes of the PSD.

PSD Program means the Prohibited Species Donation Program established under § 679.26.

PSQ allocation means a percentage of a PSQ reserve specified under § 679.21(e)(1)(i) and (e)(2)(ii) that is assigned to a CDQ group when NMFS approves a proposed CDP. See also § 679.31(d).

PSQ species means any species that has been assigned to a PSQ reserve under § 679.21(e)(1)(i) and (e)(2)(ii) for purposes of the CDQ program. See also § 679.31(d).

Qualified applicant means, for the purposes of the CDQ program:

(1) A local fishermen's organization that:

(i) Represents an eligible community or group of eligible communities;

(ii) Is incorporated under the laws of the State of Alaska or under Federal law; and

(iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities); or

(2) A local economic development organization that:

(i) Represents an eligible community or group of communities;

(ii) Is incorporated under the laws of the State of Alaska or under Federal law specifically for the purpose of designing and implementing a CDP; and

(iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

Qualified Person means:

(1) With respect to the IFQ program, see IFQ Management Measures at § 679.40(a)(2).

(2) With respect to the license limitation program, a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

Quarter, or *quarterly reporting period,* means one of four successive 3-month periods, which begin at 0001 hours, A.l.t., on the first day of each quarter, and end at 2400 hours, A.l.t., on the last day of each quarter, as follows:

(1) 1st quarter: January 1 through March 31.

(2) 2nd quarter: April 1 through June 30.

(3) 3rd quarter: July 1 through September 30.

(4) 4th quarter: October 1 through December 31.

Quota share (QS) means a permit, the face amount of which is used as a basis

for the annual calculation of a person's IFQ.

Reconstruction means a change in the LOA of the vessel from its original qualifying LOA.

Red King Crab Savings Area (RKCSA) of the BSAI (see §679.22(a)(3))

Red King Crab Savings Subarea (RKCSS) of the BSAI (see §679.21(e)(3)(ii)(B))

Regional Administrator, for purposes of this part, means the Administrator, Alaska Region, NMFS, as defined at §600.10 of this chapter, or a designee.

Regulatory area means any of three areas of the EEZ in the GOA (see Figure 3 to this part).

Reporting area (see Figures 1 and 3 to this part) means:

(1) An area that includes a statistical area of the EEZ off Alaska and any adjacent waters of the State of Alaska;

(2) The reporting areas 300, 400, 550, and 690, which do not contain EEZ waters off Alaska or Alaska state waters; or

(3) Reporting areas 649 and 659, which contain only waters of the State of Alaska.

Reprocessed or rehandled product means a product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product (see Table 1 to this part).

Resident fisherman means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in an eligible community and is eligible to receive an Alaska Permanent Fund dividend at that address.

Retain on board (see §§600.10 and 679.27 of this chapter.)

Rockfish means:

(1) For the Gulf of Alaska: Any species of the genera *Sebastes* or *Sebastelobus* except *Sebastes melanops,* (black rockfish), and *Sebastes mystinus,* (blue rockfish).

(2) For the Bering Sea and Aleutian Islands Management Area: Any species of the genera *Sebastes* or *Sebastelobus.*

Round-weight equivalent means the weight of groundfish calculated by dividing the weight of the primary product made from that groundfish by the PRR for that primary product as listed in Table 3 to this part, or, if not listed, the weight of groundfish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

Sablefish (black cod) means *Anoplopoma fimbria.*

Salmon means the following species:

(1) Chinook (or king) salmon (*Oncorhynchus tshawytscha*);

(2) Coho (or silver) salmon (*O. kisutch*);

(3) Pink (or humpback) salmon (*O. gorbuscha*);

(4) Sockeye (or red) salmon (*O. nerka*); and

(5) Chum (or dog) salmon (*O. keta*).

Scallop(s) means any species of the family Pectinidae, including, without limitation, weathervane scallops (*Patinopectin caurinus*).

Scallop Registration Area H (Cook Inlet) means all Federal waters of the GOA west of the longitude of Cape Fairfield (148°50′ W. long.) and north of the latitude of Cape Douglas (58°52′ N. lat.).

Set means a string of pots or hook-and-line gear or a group of pots that is deployed in the water in a similar location with similar soak time. A set begins when gear is deployed into the water and includes a test set, unsuccessful harvest, or when gear is not working and is pulled in, even if no fish are harvested (see also ''gear deployment'').

Shallow water flatfish (see annual final specifications published in the FEDERAL REGISTER pursuant to §679.20(c).)

Shoreside processor means any person or vessel that receives unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for personal consumption or bait.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from the shell.

Southeast Outside District of the GOA means that part of the Eastern Regulatory Area contained in Statistical Area 650 (see Figure 3 to this part).

State means the State of Alaska.

Statistical area means the part of any reporting area defined in Figures 1 and 3 to this part, contained in the EEZ.

Steller Sea Lion Protection Areas (See § 679.22(a)(7), (a)(8), and (b)(2), and § 227.12 of this title.)

Stem means the forward part of a vessel (see Figure 6 to this part)—that portion of the vessel where the sides are united at the fore end with the lower end attached to the keel and the bowsprit, if one is present, resting on the upper end.

Stern means the aft part of the vessel (see Figure 6 to this part).

Stretched mesh size means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

Superexclusive registration area means any State of Alaska designated registration area within the Bering Sea and Aleutian Islands Area where, if a vessel is registered to fish for crab, that vessel is prohibited from fishing for crab in any other registration area during that registration year.

Support vessel means any vessel that is used in support of other vessels regulated under this part, including, but not limited to, supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment or other supplies, or transporting processed fish. The term ''support vessel'' does not include processor vessels or tender vessels.

Suspending official, for purposes of subpart E of this part, means a designee authorized by the Regional Administrator to impose suspension.

Suspension, as used in § 679.50, means action taken by a suspending official under § 679.50(j) to suspend certification of observers or observer contractors temporarily until a final decision is made with respect to decertification.

Tanner crab means *Chionoecetes* species or hybrids of these species.

Target species are those species or species groups, except the ''other species'' category, for which a TAC is specified pursuant to § 679.20(a)(2).

Tax-exempt organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

Tender vessel means a vessel that is used to transport unprocessed fish received from another vessel to a shoreside processor or mothership (see also ''buying station'').

Transfer means:

(1) *Groundfish fisheries of the GOA and BSAI.* Any loading, offloading, shipment or receipt of any groundfish product by a mothership, catcher/processor, or shoreside processor, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, or at any offsite meal reduction plant.

(2) *IFQ/CDQ fisheries.* Any loading, offloading, shipment or receipt of any groundfish product, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, or at any offsite meal reduction plant.

Trawl test areas (see Figure 7 to this part and § 679.24(d)).

Unsorted codend is a codend of groundfish that is not brought on board a catcher vessel and that is delivered to a mothership or shoreside processor without the potential for sorting. No other instance of catcher vessel harvest is considered an ''unsorted codend.'' All other catch that does not meet this definition is considered ''presorted'' whether or not sorting occurs.

U.S. citizen means:

(1) *General usage.* Any individual who is a citizen of the United States.

(2) *IFQ program.* (i) Any individual who is a citizen of the United States at the time of application for QS; or

(ii) Any corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

U.S.-Russian Boundary means the seaward boundary of Russian waters as defined in Figure 1 to this part.

Vessel Activity Report (VAR) (see § 679.5).

Vessel operations category (see § 679.4).

Walrus Protection Areas (see § 679.22(a)(4)).

Weekly reporting period means a time period that begins at 0001 hours, A.l.t., Sunday morning (except during the first week of each year, when it starts on January 1) and ends at 2400 hours,

A.l.t., the following Saturday night (except during the last week of each year, when it ends on December 31).

West Yakutat District of the GOA means that part of the GOA Eastern Regulatory Area contained in Statistical Area 640 (see Figure 3 to this part).

Western Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 543 (see Figure 1 to this part).

Wing tip means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

Vessel length category means the length category of a vessel, based on the assigned MLOA, used to determine eligibility.

*Western Gulf or GOA Western Regulatory Area*s means that portion of the GOA EEZ that is contained in Statistical Area 610 (see Figure 3 to this part).

[61 FR 31230, June 19, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §679.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE 1: At 65 FR 385, Jan. 5, 2000, §679.2 was amended by adding definitions of ''ADF&G processor code,'' ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab facility,'' ''AFA inshore or mothership entity,'' ''AFA inshore processor,'' ''AFA mothership,'' ''Designated primary processor,'' ''Official AFA record,'' ''Restricted AFA catcher/processor,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unrestricted AFA catcher/processor,'' and ''Unrestricted AFA inshore processor,'', effective Dec. 30, 1999, through June 27, 2000. At 65 FR 39107, June 23, 2000, the effective date was extended to Dec. 24, 2000. For the convenience of the user, the added definitions follow:

§679.2 Definitions.

* * * * *

ADF&G processor code means State of Alaska Department of Fish & Game (ADF&G) Intent to operate processor license number (example: F12345).

AFA catcher/processor means a catcher/processor permitted to harvest BSAI pollock under §679.4(l)(2).

AFA catcher vessel means a catcher vessel permitted to harvest BSAI pollock under §679.4(l)(3).

AFA crab facility means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes Bering Sea or Aleutian Island king or Tanner crab in which any individual, corporation or other entity that is part of an AFA entity either directly or indirectly owns a 10 percent or greater interest, or exercises 10 percent or greater control.

(1) *Indirect ownership standard.* For purposes of this definition, an indirect ownership interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect, interest in the crab processing facility.

(2) *10 percent control standard.* Also for purposes of this definition, an entity is deemed to exercise 10 percent or greater control of a crab processing facility if the entity controls another entity that directly or indirectly owns a 10 percent or greater interest in the crab processing facility.

(i) The term ''control'' includes:

(A) Ownership of more than 50 percent of the entity;

(B) The right to direct the business of the entity;

(C) The right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or

(D) The right to direct the operation or manning of the crab processing facility.

(ii) The term ''control'' does not include the right to simply participate in the above actions.

AFA inshore or mothership entity means an entity that owns a mothership and/or inshore processor that processes pollock harvested in the directed BSAI pollock fishery.

(1) *10–percent ownership standard.* For purposes of this definition, all individuals, corporations or other entities that either directly or indirectly own a 10 percent or greater interest in the

mothership and/or inshore processor, as the case may be, are considered as comprising a single AFA inshore or mothership entity. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect, interest in the mothership and/or inshore processor, as the case may be.

(2) *10 percent control standard*. Also for purposes of this definition, any individual, corporation or other entity that controls another entity that directly or indirectly owns a 10 percent or greater interest in the mothership and/or inshore processor, as the case may be, is considered a part of the same AFA inshore or mothership entity of which the controlled entity is a part.

(i) The term ''control'' includes:

(A) Ownership of more than 50 percent of the entity;

(B) The right to direct the business of the entity;

(C) The right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or

(D) The right to direct the operation or manning of the mothership and/or inshore processor, as the case may be.

(ii) The term ''control'' does not include the right to simply participate in the above actions.

AFA inshore processor means a shoreside processor or stationary floating processor permitted to process BSAI pollock under § 679.4(l)(4).

AFA mothership means a mothership permitted to process BSAI pollock under § 679.4(l)(5).

* * * * *

Designated primary processor means an AFA inshore processor that is designated by an inshore pollock cooperative as the AFA inshore processor to which the cooperative will deliver at least 90 percent of its annual BSAI pollock allocation during the year in which the AFA inshore cooperative fishing permit is in effect.

* * * * *

Official AFA record means the information prepared by the Regional Administrator about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods specified in § 679.4(l). Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit will have the burden of proving correct any information submitted in an application that is inconsistent with the official record.

* * * * *

Restricted AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(ii).

Restricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(B).

* * * * *

Stationary floating processor means a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

* * * * *

Unrestricted AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(i).

Unrestricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(A).

* * * * *

EFFECTIVE DATE NOTE 2: At 65 FR 3897, Jan. 25, 2000, §679.2 was amended by adding the definition of ''Directed fishing for pollock CDQ'', effective Jan. 20, 2000, through July 19, 2000. At 65 FR 36795, June 12, 2000, the effective date was extended to Dec. 31, 2000. For the convenience of the user, the added text follows:

§679.2 Definitions.

* * * * *

Directed fishing for pollock CDQ means, for purposes of enforcing closures to directed fishing for pollock CDQ elsewhere in this part, retrieving onboard a vessel a haul in which pollock represents 60 percent or more of the total groundfish catch by weight, as determined by the observer's species composition sample for each haul. The groundfish species used to calculate total catch include all the species and species categories defined in Table 1 of the annual BSAI specifications.

* * * * *

EFFECTIVE DATE NOTE 3: At 65 FR 4537, Jan. 28, 2000, §679.2 was amended by adding definitions of ''Appointed agent for service of process,'' and ''Designated cooperative representative'' and a new paragraph (4) to ''Directed fishing'', effective Jan. 21, 2000 through July 20, 2000. At 65 FR 39107, June 23, 2000, the effective date was extended to Jan. 16, 2001. At 65 FR 39110, June 23, 2000, the phrase ''applicable through July 20, 2000'' was removed and ''applicable through January 16, 2001'' was added in its place in each definition, effective July 20, 2000 through Jan. 16, 2001. For the convenience of the user, the added text follows:

§679.2 Definitions.

* * * * *

Appointed agent for service of process (applicable through January 16, 2001) means an agent appointed by the members of an inshore catcher vessel cooperative to serve on behalf of the cooperative. The appointed agent for service of process may be the owner of a vessel listed as a member of the cooperative or a registered agent. If at any time the cooperative's appointed agent for service of process becomes unable to accept service, then the cooperative members are required to notify the Regional Administrator of a substitute appointed agent.

* * * * *

Designated cooperative representative (applicable through January 16, 2001) means an individual who is designated by the members of an inshore pollock cooperative to fulfill requirements on behalf of the cooperative including, but not limited to, the signing of cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports.

* * * * *

Directed fishing means * * *

(4) (applicable through January 16, 2001) With respect to the harvest of groundfish by AFA catcher/processors and AFA catcher vessels, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under §679.20.

* * * * *

§679.3 Relation to other laws.

(a) *Foreign fishing for groundfish.* Regulations governing U.S. nationals fishing in the Russian fisheries are set forth in part 300 of chapter III of this title.

(b) *Domestic fishing for groundfish.* (1) The conservation and management of groundfish in waters of the territorial sea and internal waters of the State of Alaska are governed by the Alaska Administrative Code at 5 AAC Chapter 28 and by the Alaska Statutes at Title 16.

(2) Alaska Administrative Code (5 AAC 39.130) governs reporting and permitting requirements using ADF&G ''Intent to Operate'' and ''Fish Tickets.''

(c) *Halibut.* Additional regulations governing the conservation and management of halibut are set forth in subpart E of part 300 of chapter III of this title.

(d) *King and Tanner crab.* Additional regulations governing conservation and management of king crab and Tanner

crab in the Bering Sea and Aleutian Islands Area are contained in Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

(e) *Incidental catch of marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth in § 216.24 and part 229 of this title.

(f) *Domestic fishing for high seas salmon.* (1) Additional regulations governing the conservation and management of high seas salmon are set forth in § 600.705 of this chapter.

(2) This part does not apply to fishing for salmon by vessels other than vessels of the United States conducted under subpart H, part 660 (West Coast Salmon Fisheries) under the North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1035, concerning fishing for salmon seaward of Washington, Oregon, and California.

(3) The High Seas Salmon Fishery is administered in close coordination with ADF&G's administration of the State of Alaska's regulations governing the salmon troll fishery off Southeast Alaska. Because no commercial fishing for salmon is allowed in the EEZ west of Cape Suckling, all commercial salmon fishing west of Cape Suckling must take place in Alaska's territorial sea and, consequently, is subject to Alaska's management authority.

(4) For State of Alaska statutes and regulations governing commercial fishing, see Alaska Statutes, title 16—Fish and Game; title 5 of the Alaska Administrative Code, chapters 1-39.

(5) For State of Alaska regulations specifically governing the salmon troll fishery, see 5 Alaska Administrative Code 30 (Yakutat Area), and 5 Alaska Administrative Code 33 (Southeastern Alaska Area).

(6) For State of Alaska statutes and regulations governing sport and personal use salmon fishing other than subsistence fishing, see Alaska Statutes, title 16—Fish and Game; 5 Alaska Administrative Codes 42.010 through 75.995.

(7) For State of Alaska statutes and regulations governing subsistence fishing, see Alaska Statutes, title 16—Fish and Game; 5 Alaska Administrative Codes 01, 02, 39, and 99.010.

(g) *Scallops.* Additional regulations governing conservation and management of scallops off Alaska are contained in Alaska Statutes A.S. 16 and Alaska Administrative Code at 5 AAC Chapter 38.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35578, July 5, 1996; 62 FR 2045, Jan. 15, 1997; 62 FR 19688, Apr. 23, 1997; 63 FR 38502, July 17, 1998; 63 FR 47356, Sept. 4, 1998]

§ 679.4 Permits.

(a) *General requirements*—(1) *Application.* (i) A person may obtain or renew an application for any of the permits under this section and must mail completed forms to the Chief, RAM Division.

(ii) Upon receipt of an incomplete or improperly completed permit application, the Chief, RAM Division, will notify the applicant of the deficiency in the permit application. If the applicant fails to correct the deficiency, the permit will not be issued. No permit will be issued to an applicant until a complete application is received.

(iii) A separate application must be completed for each vessel, processor, or buying station and a copy must be retained of each completed or revised application.

(iv) The information requested on the application must be typed or printed legibly.

(2) *Amended applications.* An owner, operator, or manager who applied for and received a permit under this section must notify the Chief, RAM Division, in writing, of any change in the information within 10 days of the date of that change.

(3) *Alteration.* No person may alter, erase, or mutilate any permit, card, or document issued under this section. Any such permit, card, or document that is intentionally altered, erased, or mutilated is invalid.

(4) *Disclosure.* NMFS will maintain a list of permitted processors that may be disclosed for public inspection.

(5) *Sanctions and denials.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904. Such procedures are required for enforcement purposes, not administrative purposes.

(6) *Harvesting privilege.* Quota shares, permits, or licenses issued pursuant to this part are neither a right to the resource nor any interest that is subject to the ''takings'' provision of the Fifth Amendment to the U.S. Constitution. Rather, such quota shares, permits, or licenses represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.

(b) *Federal Fisheries permit*—(1) *Groundfish.* No vessel of the United States may be used to fish for groundfish in the GOA or BSAI unless the owner first obtains a Federal fisheries permit for the vessel, issued under this part. A Federal fisheries permit is issued without charge.

(2) *Non-groundfish.* A vessel of the United States that fishes in the GOA or BSAI for any non-groundfish species, including but not limited to halibut, crab, salmon, scallops, and herring, and that is required to retain any bycatch of groundfish under this part must obtain a Federal fisheries permit under this part.

(3) *Vessel operations categories.* (i) A Federal fisheries permit authorizes a vessel to conduct operations in the GOA and BSAI as a catcher vessel, catcher/processor, mothership, tender vessel, or support vessel.

(ii) A vessel may be issued a Federal fisheries permit as a support vessel or as any combination of the other four categories (catcher vessel, catcher/processor, mothership, tender vessel). A vessel permitted as a catcher vessel, catcher/processor, mothership, or tender vessel also may conduct all operations authorized for a support vessel.

(4) *Duration.* (i) A Federal fisheries permit is issued on a 3-year cycle and is in effect from the date of issuance through the end of the current NMFS 3-year cycle, unless it is revoked, suspended, or modified under §600.735 or §600.740 of this chapter.

(ii) A Federal fisheries permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Division, Juneau, AK.

(5) *Application.* A complete application for a Federal fisheries permit must include the following information for each vessel:

(i) *Amended permit.* If application is for an amended permit, the current Federal fisheries permit number and information that has changed.

(ii) *Vessels.* The complete name and homeport (city and state) of the vessel; the ADF&G vessel number; the USCG documentation number or Alaska registration number; the vessel's LOA and registered net tonnage; and the telephone, fax, and COMSAT (satellite communication) numbers used on board the vessel.

(iii) *Owner information.* The owner of the vessel must record the owner's name, permanent business mailing address, telephone and fax numbers; and the name of any company (other than the owner) that manages the operations of the vessel or shoreside processor.

(iv) *Federal fisheries permit information.* The owner of the vessel must record:

(A) The fishery or fisheries and the vessel operations category for which the permit would apply, as set forth under paragraph (b)(3) of this section.

(B) If a catcher vessel or catcher/processor, the gear type(s) used for groundfish operations.

(C) If a catcher vessel, whether groundfish is retained only as bycatch from halibut, crab, or salmon fisheries; and whether sablefish is the only groundfish targeted in the GOA.

(D) If a mothership or catcher/processor operating in the GOA, indicate whether inshore or offshore component.

(v) *Signature.* The owner or agent of the owner of the vessel must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

(6) *Issuance.* (i) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed permit application, the Regional Administrator will issue a Federal fisheries permit required by this paragraph (b).

(ii) The Regional Administrator will send the Federal fisheries permit to the applicant with the appropriate logbooks, as provided under §679.5.

(7) *Amended application.* If the application for an amended permit required

under this section designates a change or addition of a vessel operations category, the amended permit must be on board the vessel before the new type of operations begins.

(8) *Transfer.* A Federal fisheries permit issued under this paragraph (b) is not transferable or assignable and is valid only for the vessel for which it is issued.

(9) *Inspection.* (i) An original Federal fisheries permit issued under this paragraph (b) must be carried on board the vessel whenever the vessel is fishing. Photocopied or faxed copies are not considered originals.

(ii) A permit issued under this paragraph (b) must be presented for inspection upon the request of any authorized officer.

(c) [Reserved]

(d) *IFQ*—(1) *General.* In addition to the permit and licensing requirements prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title and in the permit requirements of this section, all fishing vessels that harvest IFQ halibut or IFQ sablefish must have on board:

(i) *IFQ permit.* A copy of an IFQ permit that specifies the IFQ regulatory area and vessel category in which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder and a copy of the most recent accompanying statement specifying the amount of each species that may be harvested during the current IFQ fishing season; and

(ii) *IFQ card.* An original IFQ card issued by the Regional Administrator.

(2) *Registered buyer permit.* Any person who receives IFQ halibut or IFQ sablefish from the person(s) that harvested the fish must possess a registered buyer permit, except under conditions of paragraph (d)(2) (i), (ii), or (iii) of this section. A registered buyer permit also is required of any person who harvests IFQ halibut or IFQ sablefish and transfers such fish:

(i) In a dockside sale;

(ii) Outside of an IFQ regulatory area; or

(iii) Outside the State of Alaska.

(3) *Permit issuance*—(i) *IFQ permits and cards*—(A) *Issuance.* IFQ permits and cards will be renewed or issued annually by the Regional Administrator to each person with approved QS for IFQ halibut or IFQ sablefish allocated in accordance with this section.

(B) *IFQ permit.* Each IFQ permit issued by the Regional Administrator will identify the permitted person and will be accompanied by a statement that specifies the amount of IFQ halibut or IFQ sablefish that person may harvest from a specified IFQ regulatory area using fixed gear and a vessel of a specified vessel category.

(C) *IFQ card.* Each IFQ card issued by the Regional Administrator will display an IFQ permit number and the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ.

(ii) *Registered buyer permits.* Registered buyer permits will be renewed or issued annually by the Regional Administrator to persons that have a registered buyer application approved by the Regional Administrator.

(4) *Duration*—(i) *IFQ permit.* An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the amount specified under the permit, or until it is revoked, suspended, or modified under 15 CFR part 904.

(ii) *IFQ card.* An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.

(iii) *Registered buyer permit.* A registered buyer permit authorizes the person identified on the permit to receive or make an IFQ landing by an IFQ permit or card holder at any time during the fishing year for which it is issued until the registered buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904.

(5) *Transfer.* The IFQ permits issued under this section are not transferable, except as provided under § 679.41. IFQ cards and registered buyer permits

issued under this paragraph (d) are not transferable.

(6) *Inspection*—(i) *IFQ permit*. A legible copy of any IFQ permit issued under this section must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board.

(ii) *IFQ card*. Except as specified in §679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during all fishing operations until arrival at the point of landing and during all IFQ landings. The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer, clearing officer, or registered buyer purchasing IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish between the time the vessel arrives at the point of landing until the commencement of landing.

(iii) *Registered buyer permit*. A legible copy of the registered buyer permit must be present at the location of an IFQ landing, and must be made available for inspection on request of any authorized officer or clearing officer.

(7) *Validity*. An IFQ permit issued under this part is valid only if all IFQ fee liability of the IFQ permit holder that is due as a result of final agency action has been paid as specified in §§679.45 and 679.5(l)(7)(ii).

(e) *Halibut CDQ permits and CDQ cards*. See §679.32(f).

(f) *Federal processor permit*—(1) *Requirement*. No shoreside processor of the United States or vessel of the United States operating solely as a mothership in Alaska State waters may receive or process groundfish harvested in the GOA or BSAI, unless the owner first obtains a Federal processor permit issued under this part. A Federal processor permit is issued without charge.

(2) *Application*. A complete application for a Federal processor permit must include the following:

(i) If the application is for an amended permit, the current Federal processor permit number and an update of the permit information that has changed.

(ii) The shoreside processor's name, business street address, telephone number, and fax number.

(iii) The shoreside processor owner's name or names, business mailing address, managing company, if any, telephone number, ADF&G Processor Code, and fax number.

(iv) Indication of the fishery or fisheries for which the permit is requested.

(v) Indication of the shoreside processor operations category.

(vi) *Signature*. The owner or agent of the owner of the shoreside processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

(3) *Issuance*. (i) Upon receipt of a properly completed permit application, the Regional Administrator will issue a Federal processor permit required by this paragraph (f).

(ii) The Regional Administrator will send the Federal processor permit to the applicant with the shoreside processor logbook, as provided under §679.5.

(4) *Duration*. (i) A Federal processor permit is issued for a 3-year period and remains in full force and effect from the date of issuance through the end of the current NMFS 3-year renewal cycle, unless it is revoked, suspended, or modified under §600.735 or §600.740 of this chapter.

(ii) A Federal processor permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Division, Juneau, AK.

(5) *Transfer*. A Federal processor permit issued under this paragraph (f) is not transferable or assignable and is valid only for the processor for which it is issued.

(6) *Inspection*. (i) An original Federal processor permit issued under this paragraph (f) must be on site at the shoreside processor at all times. Photocopied or faxed copies are not considered originals.

(ii) A permit issued under this paragraph (f) must be presented for inspection upon the request of any authorized officer.

(g) [Reserved]

(h) *High Seas Salmon permits*—(1) *Operators of commercial fishing vessels using power troll gear.* The operator of a fishing vessel using power troll gear may engage in commercial fishing for salmon in the High Seas Salmon Management Area if the operator:

(i) Held a valid State of Alaska power troll permanent entry permit on May 15, 1979, or is a transferee under paragraph (h)(13) of this section from an operator who held such a permit on that date;

(ii) Held a valid State of Alaska power troll interim use permit on May 15, 1979; or

(iii) Holds a High Seas Salmon Fishery permit issued by the Regional Administrator under paragraph (h)(7) of this section.

(2) *Crew members and other persons not the operator of a commercial fishing vessel using power troll gear.* Crew members or other persons aboard but not the operator of a fishing vessel may assist in the vessel's commercial salmon fishing operations in the High Seas Management Area without a permit if a person described in paragraph (h)(1)(i) through (iii) of this section is also aboard the vessel and is engaged in the vessel's commercial fishing operations.

(3) *Personal use fishing.* Any person who holds a valid State of Alaska sport fishing license may engage in personal use fishing in the High Seas Salmon Management Area.

(4) *Duration.* Authorization under this paragraph (h) to engage in fishing for salmon in the High Seas Salmon Management Area constitutes a use privilege which may be revoked or modified without compensation.

(5) *Eligibility criteria for permits issued by the Regional Administrator.* (i) Any person is eligible to be issued a High Seas Salmon Fishery permit under paragraph (h)(7) of this section if that person, during any one of the calendar years 1975, 1976, or 1977:

(A) Operated a fishing vessel in the High Seas Salmon Management Area.

(B) Engaged in commercial fishing for salmon in the High Seas Salmon Management Area.

(C) Caught salmon in the High Seas Salmon Management Area using power troll gear.

(D) Landed such salmon.

(ii) The following persons are not eligible to be issued a High Seas Salmon Fishery permit under paragraph (h)(7) of this section:

(A) Persons described in paragraph (h)(1)(i) or (h)(1)(ii) of this section.

(B) Persons who once held but no longer hold a State of Alaska power troll permanent entry or interim-use permit.

(6) *Application.* Applications for a High Seas Salmon Fishery permit must be in writing, signed by the applicant, and submitted to the Regional Administrator, at least 30 days prior to the date the person wishes to commence fishing, and must include:

(i) The applicant's name, mailing address, and telephone number.

(ii) The vessel's name, USCG documentation number or State of Alaska registration number, home port, length overall, registered tonnage, and color of the fishing vessel.

(iii) The type of fishing gear used by the fishing vessel.

(iv) State of Alaska fish tickets or other equivalent documents showing the actual landing of salmon taken in the High Seas Salmon Management Area by the applicant with power troll gear during any one of the years 1975 to 1977.

(7) *Issuance.* (i) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed application, the Regional Administrator will determine whether the permit eligibility conditions have been met, and if so, will issue a High Seas Salmon Fishery permit.

(ii) If the permit is denied, the Regional Administrator will notify the applicant in accordance with paragraph (h)(16) of this section.

(iii) If an incomplete or improperly completed permit application is filed, the Regional Administrator will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of receipt of notification, the application shall be considered abandoned.

(8) *Amended application.* Any person who applies for and receives a High Seas Salmon Fishery permit issued under paragraph (h)(7) of this section must notify the Regional Administrator within 30 days of a change in

any of the information submitted under paragraph (h)(6) of this section.

(9) *Replacement.* Replacement permits may be issued for lost or unintentionally mutilated permits. An application for a replacement permit shall not be considered a new application.

(10) *Display.* Any permit or license described in paragraph (h)(1) or (h)(3) of this section must be on board the vessel at all times while the vessel is in the High Seas Salmon Management Area.

(11) *Inspection.* Any permit or license described in paragraph (h)(1) or (h)(3) of this section must be presented for inspection upon request by an authorized officer.

(12) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(13) *Transfer of authority to fish in the High Seas Salmon Management Area*—(i) *State of Alaska power troll permanent entry permits.* The authority of any person to engage in commercial fishing for salmon using power troll gear in the High Seas Salmon Management Area shall expire upon the transfer of that person's State of Alaska power troll permanent entry permit to another and shall be transferred to the new holder of that permit.

(ii) *Transfer of Authority by the Regional Administrator.* (A) Any person to whom the proposed transfer of a State of Alaska power troll permanent entry permit is denied by the State of Alaska may apply, with the consent of the current holder of that permit, to the Regional Administrator for transfer to the applicant of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the High Seas Salmon Management Area.

(B) The application for transfer shall be filed with the Regional Administrator within 30 days of the denial by the State of Alaska of the proposed transfer of the permit.

(C) The application for transfer shall include all documents and other evidence submitted to the State of Alaska in support of the proposed transfer of the permit and a copy of the State of Alaska's decision denying the transfer of the permit. The Regional Administrator may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application.

(D) The Regional Administrator shall approve the transfer if it is determined that:

(*1*) The applicant had the ability to participate actively in the fishery at the time the application for transfer of the permit was filed with the State of Alaska.

(*2*) The applicant has access to power troll gear necessary for participation in the fishery.

(*3*) The State of Alaska has not instituted proceedings to revoke the permit on the ground that it was fraudulently obtained.

(*4*) The proposed transfer of the permit is not a lease.

(E) Upon approval of the transfer application by the Regional Administrator, the authority of the permit holder to engage in commercial fishing for salmon in the High Seas Salmon Management Area using power troll gear shall expire, and that authority shall be transferred to the applicant.

(14) *Other Permits.* (i) Except for emergency transfers under paragraph (h)(15) of this section, the authority of any person described in paragraph (h)(1)(ii), (h)(1)(iii), or (h)(3) of this section to fish for salmon in the High Seas Salmon Management Area, may not be transferred to any other person.

(ii) Except for emergency transfers under paragraph (h)(15) of this section, the authority to engage in commercial fishing for salmon which was transferred under paragraph (h)(13)(ii) of this section may not be transferred to any other person except the current holder of the State of Alaska power troll permanent entry permit from which that authority was originally derived.

(iii) The authority described in paragraph (h)(14)(ii) of this section may be transferred to the current holder of that permit upon receipt of written notification of the transfer by the Regional Administrator.

(15) *Emergency transfers—authority to use power troll gear.* (i) The authority of any person to engage in commercial fishing for salmon using power troll

gear in the High Seas Salmon Management Area may be transferred to another person for a period not lasting beyond the end of the calendar year of the transfer when sickness, injury, or other unavoidable hardship prevents the holder of that authority from engaging in such fishing.

(ii) Such a transfer shall take effect automatically upon approval by the State of Alaska of an emergency transfer of a State of Alaska power troll entry permit, in accordance with the terms of the permit transfer.

(iii) Any person may apply to the Regional Administrator for emergency transfer of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the High Seas Salmon Management Area for a period not lasting beyond the calendar year of the proposed transfer, if a person:

(A) Is denied emergency transfer of a State of Alaska power troll entry permit by the State of Alaska; or

(B) Requests emergency transfer of a Federal commercial power troll permit previously issued by the Regional Administrator, with the consent of the current holder of that permit.

(iv) The Regional Administrator shall approve the transfer if he determines that:

(A) Sickness, injury, or other unavoidable hardship prevents the current permit holder from engaging in such fishing.

(B) The applicant had the ability to participate actively in the fishery at the time the application for emergency transfer of the permit was filed with the State of Alaska or, in the case of a Federal permit, with the Regional Administrator.

(C) The applicant has access to power troll gear necessary for participation in the fishery.

(D) The State of Alaska has not instituted proceedings to revoke the permit on the grounds that it was fraudulently obtained.

(v) The application in the case of a State of Alaska permit shall be filed with the Regional Administrator within 30 days of the denial by the State of Alaska of emergency transfer of the permit.

(vi) The application shall include all documents and other evidence submitted to the State of Alaska in support of the proposed emergency transfer of the permit and a copy of the State of Alaska's decision denying the emergency transfer of the permit. The Regional Administrator may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application.

(vii) Upon approval of the application by the Regional Administrator, the authority of the permit holder to engage in commercial fishing for salmon using power troll gear in the High Seas Salmon Management Area shall expire for the period of the emergency transfer, and that authority shall be transferred to the applicant for that period.

(16) *Appeals and hearings.* (i) A decision by the Regional Administrator to deny a permit under paragraph (h)(7) of this section or to deny transfer of authority to engage in commercial fishing for salmon in the High Seas Salmon Management Area under paragraphs (h)(13) and (h)(14) of this section will:

(A) Be in writing.

(B) State the facts and reasons therefor.

(C) Advise the applicant of the rights provided in this paragraph (h)(16).

(ii) Any such decision of the Regional Administrator shall be final 30 days after receipt by the applicant, unless an appeal is filed with the NOAA/NMFS Assistant Administrator within that time.

(iii) Failure to file a timely appeal shall constitute waiver of the appeal.

(iv) Appeals under this paragraph (h)(16) must:

(A) Be in writing.

(B) Set forth the reasons why the appellant believes the Regional Administrator's decision was in error.

(C) Include any supporting facts or documentation.

(v) At the time the appeal is filed with the Assistant Administrator, the appellant may request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time will constitute a waiver of the right to request a hearing.

(vi) If a hearing is requested, the Assistant Administrator may order an informal fact-finding hearing if it is determined that a hearing is necessary to resolve material issues of fact and shall so notify the appellant.

(vii) If the Assistant Administrator orders a hearing, the order will appoint a hearing examiner to conduct the hearing.

(viii) Following the hearing, the hearing examiner shall promptly furnish the Assistant Administrator with a report and appropriate recommendations.

(ix) As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this paragraph (h)(16), the Assistant Administrator shall decide the appeal.

(x) The Assistant Administrator shall promptly notify the appellant of the final decision. Such notice shall set forth the findings of the Assistant Administrator and set forth the basis of the decision. The decision of the Assistant Administrator shall be the final administrative action of the Department of Commerce.

(i) *Experimental fisheries permits.* (See §679.6.)

(j) *Salmon donation program permits.* (See §679.26(a)(3).)

(k) *Licenses for license limitation groundfish or crab species*—(1) *General requirements.* (i) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (k)(2) of this section, each vessel within the GOA or the BSAI must have a groundfish license on board at all times it is engaged in fishing activities defined in §679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish only in the specific area(s) designated on the license and may only be used on a vessel that complies with the vessel designation and MLOA specified on the license.

(ii) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (k)(2) of this section, each vessel within the Bering Sea and Aleutian Islands Area must have a crab species license on board at all times it is engaged in fishing activities defined in §679.2 as directed fishing for crab species. This crab species license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for crab species only for the specific species and in the specific area(s) designated on the license, and may be used only on a vessel that complies with the vessel designation and MLOA specified on the license.

(2) *Exempt vessels.* Notwithstanding the requirements of paragraph (k)(1) of this section,

(i) A catcher vessel or catcher/processor vessel that does not exceed 26 ft (7.9 m) LOA may conduct directed fishing for license limitation groundfish in the GOA without a groundfish license;

(ii) A catcher vessel or catcher/processor vessel that does not exceed 32 ft (9.8 m) LOA may conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license and may conduct directed fishing for crab species in the Bering Sea and Aleutian Islands Area without a crab species license;

(iii) A catcher vessel or catcher/processor vessel that does not exceed 60 ft (18.3 m) LOA may use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line, to conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license; or

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and that was, after November 18, 1992, specifically constructed for and used exclusively in accordance with a CDP approved by NMFS under Subpart C of this part, and is designed and equipped to meet specific needs that are described in the CDP may conduct directed fishing for license limitation groundfish in the GOA and in the BSAI area without a groundfish license and for crab species in the Bering Sea and Aleutian Islands Area without a crab species license.

(3) *Vessel designations and vessel length categories*—(i) *General.* A license can be used only on a vessel that complies

with the vessel designation specified on the license and that has an LOA less than or equal to the MLOA specified on the license.

(ii) *Vessel designations*—(A) *Catcher/processor vessel.* A license will be assigned a catcher/processor vessel designation if:

(*1*) For license limitation groundfish, license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (k)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (k)(4)(ii) of this section; or

(*2*) For crab species, crab species were processed on the vessel that qualified for the crab species license under paragraph (k)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (k)(5)(ii) of this section.

(*3*) For purposes of paragraphs (k)(3)(ii)(A)(*1*) and (k)(3)(ii)(A)(*2*) of this section, evidence of processing must be demonstrated by Weekly Production Reports or other valid documentation demonstrating that processing occurred on the vessel during the relevant period.

(B) *Catcher vessel.* A license will be assigned a catcher vessel designation if it does not meet the criteria in paragraph (k)(3)(ii)(A)(*1*) or (k)(3)(ii)(A)(*2*) of this section to be assigned a catcher/processor vessel designation.

(C) *Changing a vessel designation.* A person who holds a groundfish license or a crab species license with a catcher/processor vessel designation may, upon request to the Regional Administrator, have the license reissued with a catcher vessel designation. The vessel designation change to a catcher vessel will be permanent, and that license will be valid for only those activities specified in the definition of catcher vessel designation at § 679.2.

(iii) *Vessel length categories.* A vessel's eligibility will be determined using the following three vessel length categories, which are based on the vessel's LOA on June 17, 1995, or, if the vessel was under reconstruction on June 17, 1995, the vessel's length on the date that reconstruction was completed.

(A) Vessel length category ''A'' if the LOA of the qualifying vessel on the relevant date was equal to or greater than 125 ft (38.1 m) LOA.

(B) Vessel length category ''B'' if the LOA of the qualifying vessel on the relevant date was equal to or greater than 60 ft (18.3 m) but less than 125 ft (38.1 m) LOA.

(C) Vessel length category ''C'' if the LOA of the qualifying vessel on the relevant date was less than 60 ft (18.3 m) LOA.

(4) *Qualifications for a groundfish license.* A groundfish license will be issued to an eligible applicant that meets the criteria in paragraphs (k)(4)(i) and (k)(4)(ii) of this section. For purposes of the license limitation program, evidence of a documented harvest must be demonstrated by a state catch report, a Federal catch report, or other valid documentation that indicates the amount of license limitation groundfish harvested, the groundfish reporting area in which the license limitation groundfish was harvested, the vessel and gear type used to harvest the license limitation groundfish, and the date of harvesting, landing, or reporting. State catch reports are Alaska, California, Oregon, or Washington fish tickets. Federal catch reports are Weekly Production Reports required under § 679.5.

(i) *General qualification periods (GQP).* (A) At least one documented harvest of any amount of license limitation groundfish species must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (k)(4)(ii)(A) and (k)(4)(ii)(B) of this section. This documented harvest must have been of license limitation groundfish species caught and retained in the BSAI or in the State waters shoreward of the BSAI and must have occurred during the following periods:

(*1*) January 1, 1988, through June 27, 1992;

(*2*) January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using

pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(*3*) January 1, 1988, through June 17, 1995, provided that, during the period January 1, 1988, through February 9, 1992, the vessel made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area, and, during the period February 10, 1992, through December 11, 1994, made a legal landing of any groundfish species harvested in the GOA or BSAI using trawl gear or a legal landing harvested in the GOA or BSAI of any groundfish species using longline gear, except sablefish landed using fixed gear.

(B) At least one documented harvest of any amount of license limitation groundfish species must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (k)(4)(ii)(C) through (k)(4)(ii)(E) of this section. This documented harvest must have been of fish caught and retained in the GOA or in the State waters shoreward of the GOA and must have occurred during the following periods:

(*1*) January 1, 1988, through June 27, 1992;

(*2*) January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(*3*) January 1, 1988, through June 17, 1995, provided that, during the period January 1, 1988, through February 9, 1992, the vessel made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area, and during the period February 10, 1992, through December 11, 1994, made a legal landing of any groundfish species harvested in the GOA or BSAI using trawl gear or a legal landing of any groundfish species harvested in the GOA or BSAI using longline gear, except sablefish landed using fixed gear.

(ii) *Endorsement qualification periods (EQP).* A groundfish license will be assigned one or more area endorsements based on the criteria in paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(E) of this section.

(A) *Aleutian Islands area endorsement.* For a license to be assigned an Aleutian Islands endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel categories ''A'' through ''C'') between January 1, 1992, and June 17, 1995, and in the Aleutian Islands Subarea or in State waters shoreward of that subarea.

(B) *Bering Sea area endorsement.* For a license to be assigned a Bering Sea area endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel categories ''A'' through ''C'') between January 1, 1992, and June 17, 1995, and in the Bering Sea Subarea or in State waters shoreward of that subarea.

(C) *Western Gulf Area Endorsement. (1) Vessel length category ''A.''* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category ''A,'' at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(*2*) *Vessel length category ''B'' and catcher vessel designation.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category ''B'' and that would qualify for a catcher vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(*3*) *Vessel length category ''B'' and catcher/processor vessel designation.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category ''B'' and that would qualify for a catcher/processor vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in

each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area, or at least four documented harvests of any amount of license limitation groundfish harvested from January 1, 1995, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(*4*) *Vessel length category ''C''.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category ''C'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(D) *Central Gulf area endorsement*—(*1*) *Vessel length category ''A''.* For a license to be assigned a Central Gulf area endorsement based on the participation of a vessel in vessel length category ''A'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(*2*) *Vessel length category ''B''.* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category ''B'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four documented harvests from January 1, 1995, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(*3*) *Vessel length category ''C''.* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category ''C'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(E) *Southeast Outside area endorsement*—(*1*) *Vessel length category ''A''.* For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category ''A'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Southeast Outside District or in State waters shoreward of that district.

(*2*) *Vessel length category ''B''.* For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category ''B'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four documented harvests from January 1, 1995, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Southeast Outside District or in State waters shoreward of that district.

(*3*) *Vessel length category ''C''.* For a license to be assigned a Southeast outside area endorsement based on the participation from a vessel in vessel length category ''C'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Southeast Outside District or in State waters shoreward of that district.

(iii) An eligible applicant that is issued a groundfish license based on a vessel's qualifications under paragraph (k)(4)(i)(A)(*2*) or (k)(4)(i)(B)(*2*) of this section must choose only one area endorsement for that groundfish license even if the vessel qualifies for more than one area endorsement.

(iv) Notwithstanding the provisions in paragraph (k)(4) of this section, a license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements of paragraph (k)(4)(i)(A), and the requirements of paragraph (k)(4)(ii)(C), (k)(4)(ii)(D), or (k)(4)(ii)(E) of this section, but

(A) From whose vessel no documented harvests were made in the GOA or state waters shoreward of the GOA between January 1, 1988, and June 27, 1992, and

(B) From whose vessel no documented harvests were made in the BSAI or state waters shoreward of the BSAI between January 1, 1992, and June 17, 1995.

(v) Notwithstanding the provisions of paragraph (k)(4) of this section, a license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements of paragraph (k)(4)(i)(B) of this section, and the requirements of paragraph (k)(4)(ii)(A) or (k)(4)(ii)(B) of this section, but

(A) From whose vessel no documented harvests were made in the BSAI or state waters shoreward of the BSAI between January 1, 1988, and June 27, 1992, and

(B) From whose vessel no documented harvests were made in the GOA or state waters shoreward of the GOA between January 1, 1992, and June 17, 1995.

(5) *Qualifications for a crab species license*. A crab species license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (k)(5)(i) and (k)(5)(ii) of this section, except that vessels are exempt from the requirements in paragraph (k)(5)(i) of this section for the area/species endorsements in paragraph (k)(5)(ii)(A) and (k)(5)(ii)(G) of this section.

(i) *General qualification period (GQP)*. To qualify for one or more of the area/species endorsements in paragraph (k)(5)(ii) of this section:

(A) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and June 27, 1992; or

(B) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and December 31, 1994, providing that, during the period January 1, 1988, through February 9, 1992, the vessel for which the documented harvest was made also made a legal landing of any groundfish species harvested in the GOA or BSAI with any authorized gear, except sablefish caught with fixed gear, and, during the period February 10, 1992, through December 11, 1994, made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area.

(ii) *Area/Species Endorsements*. A crab species license will be assigned one or more area/species endorsements specified at §679.2 based on the criteria in paragraphs (k)(5)(ii)(A) through (G) of this section.

(A) *Pribilof red king and Pribilof blue king*. At least one documented harvest of any amount of red king or blue king crab harvested in the area described in the definition for the Pribilof red king and Pribilof blue king area/species endorsement in §679.2 must have been made from a vessel between January 1, 1993, and December 31, 1994, to qualify for a Pribilof red king and Pribilof blue king area/species endorsement.

(B) *Bering Sea and Aleutian Islands Area C. opilio and C. bairdi*. At least three documented harvests of any amount of *C. opilio* or *C. bairdi* crab harvested in the area described in the definition for the Bering Sea and Aleutian Islands Area *C. opilio* or *C. bairdi* area/species endorsement in §679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a *C. opilio* and *C. bairdi* area/species endorsement.

(C) *St. Matthew blue king*. At least one documented harvest of any amount of blue king crab harvested in the area described in the definition for the St. Matthews blue king area/species endorsement in §679.2 must have been made from a vessel between January 1,

1992, and December 31, 1994, to qualify for a St. Matthew blue king area/species endorsement.

(D) *Aleutian Islands brown king.* At least three documented harvests of any amount of brown king crab harvested in the area described in the definition for the Aleutian Islands brown king area/species endorsement in §679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a Aleutian Islands brown king area/species endorsement.

(E) *Aleutian Islands red king.* At least one documented harvest of any amount of red king crab harvested in the area described in the definition for the Aleutian Islands red king area/species endorsement in §679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a Aleutian Islands red king area/species endorsement.

(F) *Bristol Bay red king.* At least one documented harvest of any amount of red king crab harvested in the area described in the definition for the Bristol Bay red king area/species endorsement in §679.2 must have been made from a vessel between January 1, 1991, and December 31, 1994, to qualify for a Bristol Bay red king area/species endorsement.

(G) *Norton Sound red king and Norton Sound blue king.* At least one documented harvest of any amount of red king or blue king crab harvested in the area described in the definition for the Norton Sound red king and Norton Sound blue king area/species endorsement in §679.2 must have been made from a vessel between January 1, 1993, and December 31, 1994, to qualify for a Norton Sound red king and Norton Sound blue king area/species endorsement.

(6) *Application for a groundfish license or a crab species license.* (i) *General.* The Regional Administrator will issue a groundfish license or a crab species license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in paragraph (k) of this section. An application that is postmarked or delivered after the ending date for the application period for the License Limitation Program specified in the *Federal Register* will be denied. An application form will be sent to the last known address of a person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application period.* An application period of no less than 90 days will be specified by notification in the *Federal Register* and other information sources deemed appropriate by the Regional Administrator.

(iii) *Contents of application.* To be complete, an application for a groundfish license or a crab species license must be signed by the applicant, or the individual representing the applicant, and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the applicant;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel being used as the basis for eligibility for a license; and name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license if different than the vessel used as the basis of eligibility for a license;

(C) Name of the managing company, if any;

(D) Valid evidence of the documented harvests that are the basis of eligibility for a license, including harvest area, gear used, date of landing, and, if applying for a crab species license, species;

(E) Valid evidence of LOA on June 24, 1992, of the vessel used as the basis of eligibility for a license, except if that vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed and valid evidence of when reconstruction began and ended;

(F) Valid evidence of LOA on June 17, 1995, of the vessel used as the basis of eligibility for a license, except if that vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed, and valid evidence of when reconstruction began and ended;

(G) Valid evidence to support the applicant's claim for a vessel designation of catcher vessel or catcher/processor vessel;

(H) Valid evidence of ownership of the vessel being used as the basis for eligibility for a license (for USCG documented vessels, valid evidence must be the USCG Abstract of Title), or if eligibility is based on a fishing history that has been separated from a vessel, valid evidence of ownership of the fishing history being used as the basis of eligibility for a license; and

(I) Valid evidence of the LOA of the vessel to be deployed by the license if different than the vessel used as the basis for eligibility for a license.

(iv) *Other information required for special circumstances.*

(A) *Successor-in-interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(*1*) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was or is an individual; or

(*2*) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(B) *Norton Sound crab species license endorsement.* If an applicant is applying for a crab species license endorsement for Norton Sound and if the applicant is a person, an application, to be complete, must contain valid evidence that the applicant was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994. If the applicant is a corporation, an application, to be complete, must contain valid evidence that the corporation owned or had a lease for a vessel on June 17, 1995, that participated in the Norton Sound king crab summer fishery in 1993 or 1994.

(C) *Extended general qualification period.* If an applicant is applying for a license based on meeting the general qualification period requirements of paragraph (k)(4)(i)(A)(*2*) or (k)(4)(i)(B)(*2*) of this section, the application, to be complete, must indicate which single endorsement area the applicant has selected for license. A license cannot be endorsed for more than one area, notwithstanding the fact that the applicant may have the documented harvests to qualify for more than one endorsement area.

(D) *Unavoidable circumstances.* If an applicant is applying for a license based on an unavoidable circumstance pursuant to paragraph (k)(8)(iv) of this section, an application, to be complete, must contain the information required by that paragraph and valid evidence of the date the vessel on which the application is based was lost, damaged, or otherwise unable to participate in the fishery, and the date a documented harvest was made from the replacement vessel.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. Pursuant to paragraph (k)(6)(vii) of this section, an applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving

that the inconsistent claims in his or her application is correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (k)(6)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on consistent information in the application.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant on issuance of an IAD if required by the license renewal provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(7) *Transfer of a groundfish license or a crab species license*—(i) *General.* The Regional Administrator will transfer a groundfish license or a crab species license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets the eligibility criteria as specified in paragraph (k)(7)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A groundfish license or crab species license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license caps in § 679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of application.* To be complete, an application for a groundfish license transfer or a crab species license transfer must be signed by the license holder and the designated transferee, or the individuals representing them, and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the license holder and the designated transferee;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license (i.e., the designated vessel) after the transfer is approved;

(C) Valid evidence that the designated transferee is a person eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer, and the signature of the license holder and the designated transferee; and

(E) Information regarding whether a broker was used for the transaction, whether the license was collateralized, and other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (k)(7) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a groundfish license or a crab species license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(vi) *Voluntary transfer limitation.* A groundfish license or a crab species license may be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved.

(vii) *Request to change the designated vessel.* A request to change the vessel designated on an LLP groundfish or crab species license must be made on a transfer application. If this request is approved and made separately from a license transfer, it will count towards the annual limit on voluntary transfers specified in paragraph (k)(7)(vi) of this section.

(viii) *Severability of licenses.* (A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together.

(B) A groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person are not severable and must be transferred together.

(8) *Other provisions.* (i) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Fishery Conservation and Management Act or any regulations issued pursuant thereto, is subject to the civil and criminal penalty provisions and the civil forfeiture provisions of the Magnuson-Stevens Fishery Conservation and Management Act, part 621 of this chapter, 15 CFR part 904 (Civil Procedure), and other applicable law. Penalties include, but are not limited to, permanent or temporary sanctions to licenses.

(ii) Notwithstanding the provisions of the license limitation program in this part, vessels fishing for species other than license limitation groundfish as defined in §679.2 that were authorized under Federal regulations to incidentally catch license limitation groundfish without a Federal fisheries permit described at §679.4(b) will continue to be authorized to catch the maximum retainable bycatch amounts of license limitation groundfish as provided in this part without a groundfish license.

(iii) An eligible applicant, who qualifies for a groundfish license or crab species license but whose vessel on which the eligible applicant's qualification was based was lost or destroyed, will be issued a license. This license:

(A) Will have the vessel designation of the lost or destroyed vessel.

(B) Cannot be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species on a vessel that has an LOA greater than the MLOA designated on the license.

(iv) A qualified person who owned a vessel on June 17, 1995, that made a documented harvest of license limitation groundfish, or crab species if applicable, between January 1, 1988, and February 9, 1992, but whose vessel was unable to meet all the criteria in paragraph (k)(4) of this section for a groundfish license or paragraph (k)(5) of this section for a crab species license because of an unavoidable circumstance (i.e., the vessel was lost, damaged, or otherwise unable to participate in the license limitation groundfish or crab fisheries) may receive a license if the qualified person is able to demonstrate that:

(A) The owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel during a specific time period in a specific area.

(B) The specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel was thwarted by a circumstance that was:

(*1*) Unavoidable.

(*2*) Unique to the owner of that vessel, or unique to that vessel.

(*3*) Unforeseen and reasonably unforeseeable to the owner of the vessel.

(C) The circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species actually occurred.

(D) Under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species.

(E) Any amount of license limitation groundfish or appropriate crab species was harvested on the vessel in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person who owned a vessel on June 17, 1995, is applying and that the license limitation groundfish or crab species was harvested after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

(v) A groundfish license or a crab species license may be used on a vessel that complies with the vessel designation on the license and that does not exceed the MLOA on the license.

[61 FR 31230, June 19, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 679.4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 65 FR 386, Jan. 5, 2000, § 679.4 was amended by adding paragraph (l), effective Dec. 30, 1999, through June 27, 2000. At 65 FR 39107, 39110, June 23, 2000, the effective date was extended from June 27, 2000, to Dec. 24, 2000, and paragraph (l) heading was revised, paragraph (l)(1)(v) was added and paragraph (l)(6)(v) was revised, effective June 28, 2000, through Dec. 24, 2000. For the convenience of the user, the added text follows:

§ 679.4 Permits.

* * * * *

(l) *AFA permits* (applicable through December 24, 2000)—(1) *General*—(i) *Applicability*. In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. An AFA permit does not exempt a vessel operator, vessel, or processor from any other applicable permit or licensing requirement required under this part or in other state or Federal regulations.

(ii) *Duration*. Except as provided in paragraph (l)(6)(iv) of this section, and unless suspended or revoked, AFA vessel and processor permits are valid until December 31, 2004.

(iii) *Application for permit*. NMFS will issue AFA vessel and processor permits to the current owner(s) of a qualifying vessel or processor if the owner(s) submits to the Regional Administrator a completed AFA permit application that is subsequently approved.

(iv) *Amended permits*. AFA vessel and processor permits may not be used on or transferred to any vessel or processor that is not listed on the permit. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. An application to amend an AFA permit must include the following:

(A) The original AFA permit to be amended, and

(B) A completed AFA permit application signed by the new vessel or processor owner.

(v) *Application deadline*. All AFA vessel and processor permit applications must be received by the Regional Administrator by December 1, 2000. AFA vessel and processor permit applications received after December 1, 2000, will not be accepted by the Regional Administrator and the applicant will be permanently ineligible to receive the requested AFA permit.

(2) *AFA catcher/processor permits*—(i) *Unrestricted*. NMFS will issue to an owner of a catcher/processor an unrestricted AFA catcher/processor permit if the catcher/processor is one of the following (as listed in AFA paragraphs 208(e)(1) through (20)):

AMERICAN DYNASTY (USCG documentation number 951307);

KATIE ANN (USCG documentation number 518441);

AMERICAN TRIUMPH (USCG documentation number 646737);

NORTHERN EAGLE (USCG documentation number 506694);

NORTHERN HAWK (USCG documentation number 643771);

NORTHERN JAEGER (USCG documentation number 521069);

OCEAN ROVER (USCG documentation number 552100);

ALASKA OCEAN (USCG documentation number 637856);

ENDURANCE (USCG documentation number 592206);

AMERICAN ENTERPRISE (USCG documentation number 594803);

ISLAND ENTERPRISE (USCG documentation number 610290);

KODIAK ENTERPRISE (USCG documentation number 579450);

SEATTLE ENTERPRISE (USCG documentation number 904767);

US ENTERPRISE (USCG documentation number 921112);

ARCTIC STORM (USCG documentation number 903511);

ARCTIC FJORD (USCG documentation number 940866);

NORTHERN GLACIER (USCG documentation number 663457);

PACIFIC GLACIER (USCG documentation number 933627);

HIGHLAND LIGHT (USCG documentation number 577044);

STARBOUND (USCG documentation number 944658).

(ii) *Restricted*. NMFS will issue to an owner of a catcher/processor a restricted AFA catcher/processor permit if the catcher/processor is not listed in §679.4(l)(2)(i) and is determined by the Regional Administrator to have harvested more than 2,000 mt of pollock in the 1997 BSAI directed pollock fishery.

(3) *AFA catcher vessel permits*. NMFS will issue to an owner of a catcher vessel an AFA catcher vessel permit containing sector endorsements and sideboard restrictions upon receipt and approval of a completed application for an AFA catcher vessel permit.

(i) *Qualifying criteria*—(A) *Catcher vessels delivering to catcher/processors*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to a catcher/processor if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(b)(1) through (7) of the AFA):

AMERICAN CHALLENGER (USCG documentation number 633219);

FORUM STAR (USCG documentation number 925863);

MUIR MILACH (USCG documentation number 611524);

NEAHKAHNIE (USCG documentation number 599534);

OCEAN HARVESTER (USCG documentation number 549892);

SEA STORM (USCG documentation number 628959);

TRACY ANNE (USCG documentation number 904859); or

(*2*) Is not listed in § 679.4(l)(3)(i)(A)(*1*) and is determined by the Regional Administrator to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component.

(B) *Catcher vessels delivering to AFA motherships*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA mothership if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(c)(1) through (19) and subsection 211(e) of the AFA):

ALEUTIAN CHALLENGER (USCG documentation number 603820);

ALYESKA (USCG documentation number 560237);

AMBER DAWN (USCG documentation number 529425);

AMERICAN BEAUTY (USCG documentation number 613847);

CALIFORNIA HORIZON (USCG documentation number 590758);

MAR–GUN (USCG documentation number 525608);

MARGARET LYN (USCG documentation number 615563);

MARK I (USCG documentation number 509552);

MISTY DAWN (USCG documentation number 926647);

NORDIC FURY (USCG documentation number 542651);

OCEAN LEADER (USCG documentation number 561518);

OCEANIC (USCG documentation number 602279);

PACIFIC ALLIANCE (USCG documentation number 612084);

PACIFIC CHALLENGER (USCG documentation number 518937);

PACIFIC FURY (USCG documentation number 561934);

PAPADO II (USCG documentation number 536161);

TRAVELER (USCG documentation number 929356);

VESTERAALEN (USCG documentation number 611642);

WESTERN DAWN (USCG documentation number 524423);

LISA MARIE (USCG documentation number 1038717); or

(*2*) Is not listed in § 679.4(l)(3)(i)(B)(*1*) and is determined by the Regional Administrator to have delivered at least 250 mt of pollock for processing by motherships in the offshore component of the BSAI directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998, and is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A).

(C) *Catcher vessels delivering to AFA inshore processors*. NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA inshore processor if the catcher vessel:

(*1*) Is the LISA MARIE (USCG documentation number 1038717); or

(*2*) Is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A), and:

(*i*) Is determined by the Regional Administrator to have delivered at least 250 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

(*ii*) Is less than 60 ft (18.1 meters) LOA and is determined by the Regional Administrator to have delivered at least 40 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998.

(ii) *Application for AFA catcher vessel permit*. A completed application for an AFA catcher vessel permit must contain:

(A) *Vessel information*. The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Owner information*. Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(C) *Vessel AFA qualification information*. AFA catcher vessel permit endorsement(s) requested; and

(D) *Vessel crab activity information required for crab sideboard endorsements.* The owner of an AFA catcher vessel wishing to participate in any BSAI king or Tanner crab fishery must apply for a crab sideboard endorsement authorizing the catcher vessel to retain that crab species. An AFA catcher vessel permit may be endorsed for a crab species if the owner requests a crab sideboard endorsement, provides supporting documentation that the catcher vessel made the required legal landing(s) of a crab species, and the Regional Administrator verifies the legal landing(s) according to the following criteria:

(*1*) *Bristol Bay Red King Crab (BBRKC)*: A legal landing of any BSAI king or Tanner crab species in 1996, 1997, or on or before February 7, 1998. A BBRKC sideboard endorsement also authorizes a vessel to retain Bairdi Tanner crab harvested during the duration of a BBRKC opening if the vessel is otherwise authorized to retain Bairdi Tanner crab while fishing for BBRKC under state and Federal regulations.

(*2*) *St. Matthew Island blue king crab*: A legal landing of St. Matthew Island blue king crab in that fishery in 1995, 1996, or 1997.

(*3*) *Pribilof Island red and blue king crab*: A legal landing of Pribilof Island blue or red king crab in that fishery in 1995, 1996, or 1997.

(*4*) *Aleutian Islands (Adak) brown king crab*: A legal landing of Aleutian Islands brown king crab during in each of the 1997/1998 and 1998/1999 fishing seasons.

(*5*) *Aleutian Islands (Adak) red king crab*: A legal landing of Aleutian Islands red king crab in each of the 1995/1996 and 1998/1999 fishing seasons.

(*6*) *Opilio Tanner crab*: A legal landing of *Chionoecetes*(*C.*) *opilio* Tanner crab in each of 4 or more years from 1988 to 1997.

(*7*) *Bairdi Tanner crab*: A legal landing of *C. bairdi* Tanner crab in 1995 or 1996.

(E) *Vessel exemptions from AFA catcher vessel groundfish sideboard directed fishing closures.* An AFA catcher vessel permit may contain exemptions from certain groundfish sideboard directed fishing closures. If a vessel owner is requesting an exemption from groundfish sideboard-directed closures, the application must provide supporting documentation that the catcher vessel qualifies for the exemption based on the criteria set out below. The Regional Administrator will review the vessel's catch history according to the following criteria:

(*1*) *BSAI Pacific cod.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the BSAI Pacific cod fishery, the catcher vessel must be less than 125 ft LOA, have harvested a combined total of less than 5,100 mt of BSAI pollock, and have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod during the combined years 1995, 1996, and 1997.

(*2*) *GOA groundfish species.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the GOA groundfish fisheries, the catcher vessel must be less than 125 ft LOA, have harvested a combined total of less than 5,100 mt of BSAI pollock and made 40 or more legal landings of GOA groundfish during the combined years 1995, 1996, and 1997.

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and stamp and signature of a notary public.

(4) *AFA mothership permits.* NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779).

(i) *Cooperative processing endorsement.* The owner of an AFA mothership who wishes to process pollock harvested by a fishery cooperative formed under § 679.60 must apply for and receive a co-operative processing endorsement on the vessel's AFA mothership permit.

(ii) *Application for AFA mothership permit.* A completed application for an AFA mothership permit must contain:

(A) *Type of permit requested.* Type of processor and whether requesting an AFA co-operative endorsement.

(B) *Mothership information*. The mothership name, ADF&G processor code, USCG documentation number, Federal fisheries permit number, gross tons, shaft horsepower, and registered length (in feet).

(C) *Owner information*. Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(D) *AFA crab facility ownership information*. If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each of each AFA crab facility that is owned or controlled by the AFA mothership entity that owns or controls the AFA mothership; and

(E) *Certification of notary and applicant*. Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(5) *AFA inshore processor permits*. NMFS will issue to an owner of a shoreside processor or stationary floating processor an AFA inshore processor permit upon receipt and approval of a completed application.

(i) *Qualifying criteria*—(A) *Unrestricted processors*. NMFS will issue an unrestricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the processor facility processed annually more than 2,000 mt round-weight of pollock harvested in the inshore component of the directed BSAI pollock fishery during each of 1996 and 1997.

(B) *Restricted processors*. NMFS will issue a restricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the facility processed pollock harvested in the inshore component of the directed BSAI pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round-weight of BSAI pollock during each of 1996 and 1997.

(ii) *Cooperative processing endorsement*. The owner of an AFA inshore processor who wishes to process pollock harvested by a fishery cooperative formed under § 679.61 must apply for and receive a cooperative processing endorsement on the AFA inshore processor permit.

(iii) *Single geographic location requirement*. An AFA inshore processor permit authorizes the processing of pollock harvested in the BSAI directed pollock fishery in only a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) *Shoreside processors*. The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors*. A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(iv) *Application for permit*. A completed application for an AFA inshore processor permit must contain:

(A) *Type of permit requested*. Type of processor, whether requesting an AFA cooperative endorsement, and amount of BSAI pollock processed in 1996 and 1997;

(B) *Stationary floating processor information*. The vessel name, ADF&G processor code, USCG documentation number, Federal processor permit number, gross tons, shaft horsepower, registered length (in feet), and business telephone number, business FAX number, and business E-mail address used onboard the vessel.

(C) *Shoreside processor information*. The processor name, Federal processor permit number, ADF&G processor code, business street address; business telephone and FAX numbers, and business e-mail address.

(D) *Owner information*. Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(E) *AFA crab facility ownership information*. If the applicant is applying for a cooperative pollock processing endorsement, the AFA inshore processor application must list the name, type of

facility, ADF&G processor code, and percentage of ownership or control of each of each AFA crab facility that is owned or controlled by the AFA inshore processor entity that owns or controls the AFA inshore processor; and

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(6) *Inshore cooperative fishing permits*—(i) *General.* NMFS will issue to an inshore catcher vessel cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor an AFA inshore cooperative fishing permit upon receipt and approval of a completed application.

(ii) *Application for permit.* A completed application for an inshore cooperative fishing permit must contain the following information:

(A) *Cooperative contact information.* Name of cooperative; name of cooperative representative; and business mailing address, business telephone number, business fax number, and business e-mail address of the cooperative;

(B) *Designated cooperative processor.* The name and physical location of AFA Inshore Processor that is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BSAI pollock catch. If the processor is a stationary floating processor, the single geographic location (latitude and longitude) at which the processor will process BSAI pollock under the AFA; and Federal processor permit number of the AFA inshore processor;

(C) *Cooperative contract information.* A copy of the cooperative contract and a written certification that:

(*1*) The contract was signed by the owners of at least 80 percent of the qualified catcher vessels. For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if:

(*i*) it delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; and

(*ii*) the owner(s) of the catcher vessel in question has submitted a completed application for an AFA catcher vessel permit to the Regional Administrator that was received on or before December 31, 1999 and which is not subsequently denied.

(*2*) The cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor; and

(*3*) Each catcher vessel in the cooperative is a qualified catcher vessel and is otherwise eligible to fish for groundfish in the BSAI, has an AFA catcher vessel permit with an inshore endorsement, and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI;

(D) *Business review letter.* A copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice, and any response to such request;

(E) *Vessel information.* For each cooperative catcher vessel member: Vessel name, ADF&G registration number, USCG documentation number, AFA permit number; and

(F) *Certification of notary and applicant.* Signature and printed name of cooperative representative, date of signature, and notary stamp or seal of a notary public.

(iii) *Duration of cooperative fishing permits.* Inshore cooperative fishing permits are valid for 1 calendar year.

(iv) *Add or subtract vessels to a cooperative fishing permit.* The cooperative representative must submit a new application to add or subtract a catcher vessel to or from an inshore cooperative fishing permit to the Regional Administrator prior to the application deadline. Upon approval by the Regional Administrator, NMFS will issue an amended cooperative fishing permit.

(v) *Application deadline.* An inshore cooperative fishing permit application and any subsequent contract amendments that add or subtract vessels must be received by the Regional Administrator by December 1 prior to the year in which the inshore cooperative

fishing permit will be in effect. Inshore cooperative fishing permit applications or amendments to inshore fishing cooperative permits received after December 1 will not be accepted by the Regional Administrator for the subsequent fishing year.

(7) *Replacement vessels.* (i) In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may replace such vessel with a replacement vessel. The replacement vessel will be eligible in the same manner as the original vessel after submission and approval of an application for an AFA replacement vessel provided that:

(A) Such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(B) The replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

(C) The USCG certificate of documentation with fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(D) If the eligible vessel is greater than 165 ft (50.3 meters (m)) in registered length, or more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(E) If the eligible vessel is less than 165 ft (50.3 m) in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(F) If the replacement vessel is already an AFA catcher vessel, the inshore cooperative catch history of both vessels may be merged in the replacement vessel for the purpose of determining inshore cooperative allocations except that a catcher vessel with an endorsement to deliver pollock to AFA catcher/processors may not be simultaneously endorsed to deliver pollock to AFA motherships or AFA inshore processors.

(ii) *Application for permit.* A completed application for an AFA permit for replacement vessel must contain:

(A) *Identification of lost AFA eligible vessel.*

(*1*) Name, ADF&G vessel registration number, USCG documentation number, AFA permit number, gross tons, shaft horsepower, and registered length from USCG documentation of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), telephone number(s), FAX number(s), and e-mail address(es) of owner(s);

(*3*) Last year in which this vessel harvested or processed pollock in a BSAI directed pollock fishery; and

(*4*) Description of how the vessel was lost or destroyed. Attach a USCG Form 2692 or insurance papers to verify the claim.

(B) *Identification of replacement vessel.*

(*1*) Name, ADF&G vessel registration number, USCG documentation number, gross tons, shaft horsepower, registered length, net tons, and length overall (in feet) from USCG documentation, and Federal Fisheries Permit number of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), business telephone number(s), business FAX number(s), and business e-mail address(es) of the owner(s);

(*3*) YES or NO indication of whether the vessel was built in the United States; and

(*4*) YES or NO indication of whether the vessel has ever been rebuilt, and if so whether it was rebuilt in the United States.

(C) *Certification of applicant and notary.* Signature(s) and printed name(s) of owner(s) and date of signature; signature, notary stamp or seal of notary public, and date notary commission expires.

(8) *Application evaluations and appeals*—(i) *Initial evaluation.* The Regional Administrator will evaluate an application for an AFA fishing or processing permit submitted in accordance with this paragraph (1) and compare all

claims in the application with the information in the official AFA record. Claims in the application that are consistent with information in the official AFA record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless supported by evidence, will not be accepted. An applicant who submits inconsistent claims or fails to submit the information specified in the application for an AFA permit will be provided a 60-day evidentiary period to submit the specified information, submit evidence to verify the applicant's inconsistent claims, or submit a revised application with claims consistent with information in the official AFA record. An applicant who submits claims that are inconsistent with information in the official AFA record has the burden of proving that the submitted claims are correct.

(ii) *Additional information and evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official AFA record will be amended and the information will be used in determining whether the applicant is eligible for an AFA permit. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination that the applicant did not meet the burden of proof to change information in the official AFA record.

(iii) *Sixty-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official AFA record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit required information will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application received after the 60-day evidentiary period specified in the letter has expired will not be considered for the purposes of the initial administrative determination.

(iv) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official AFA record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD also will indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set out at §679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will receive an interim AFA permit that authorizes a person to participate in an AFA pollock fishery, and will have the specific endorsements and designations based on the claims in his or her application. An interim AFA permit will expire upon final agency action.

(v) *Effect of cooperative allocation appeals.* An AFA inshore cooperative may appeal the pollock quota share issued to the cooperative under §679.61; however, final agency action on the appeal must occur prior to December 15 for the results of the appeal to take effect during the subsequent fishing year.

§ 679.5 Recordkeeping and reporting.

(a) *General requirements*—(1) *Applicability, Federal fisheries permit*—(i) *Requirement.* Except as provided in paragraphs (a)(1)(iii) and (iv) of this section, the following participants must comply with the recordkeeping and reporting requirements of this section:

(A) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(B) Any shoreside processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4.

(C) Any buying station that receives or delivers groundfish in association with a mothership issued a Federal fisheries permit under § 679.4(b) or with a shoreside processor or vessel operating solely as a mothership in Alaska State waters issued a Federal processor permit under § 679.4(f).

(ii) *Shoreside processor, mothership, or buying station.* A shoreside processor, mothership, or buying station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a federal fisheries permit.

(B) Fish received under contract for handling or processing for another processor.

(iii) *Exemption for vessels less than 60 ft (18.3 m) LOA.* A catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with recordkeeping and reporting requirements contained in § 679.5(a) through (k).

(iv) *Exemption for groundfish used as crab bait.* (A) Owners or operators of catcher vessels who take groundfish in crab pot gear for use as crab bait on board their vessels while participating in an open season for crab, and the bait is neither transferred nor sold, are exempt from Federal recordkeeping and reporting requirements contained in paragraphs (a) through (j) of this section.

(B) This exemption does not apply to fishermen who:

(*1*) Catch groundfish for bait during an open crab season and sell that groundfish or transfer it to another vessel, or

(*2*) Participate in a directed fishery for groundfish using any gear type during periods that are outside an open crab season for use as crab bait on board their vessel.

(C) No groundfish species listed by NMFS as ''prohibited'' in a management or regulatory area may be taken in that area for use as bait.

(v) *IFQ fisheries or CDQ halibut fisheries.* Any catcher vessel or catcher/processor that participates in a IFQ sablefish fishery, IFQ halibut fishery, or CDQ halibut fishery in addition to the groundfish fisheries of the GOA or BSAI and that is required to maintain a logbook under this section, must use a combined groundfish/IFQ logbook.

(2) *Applicability, Federal processor permit.* Any shoreside processor or vessel operating solely as a mothership in Alaska State waters that retains groundfish is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(3) *Responsibility.* (i) The operator of a catcher vessel, catcher/processor, mothership, or buying station receiving from a catcher vessel and delivering to a mothership (hereafter referred to as the operator) and the manager of a shoreside processor or buying station receiving from a catcher vessel and delivering to a shoreside processor (hereafter referred to as the manager) are each responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(ii) The owner of a vessel, shoreside processor, or buying station is responsible for compliance and must ensure that the operator, manager, or representative (see paragraph (b) of this section) complies with the requirements given in paragraph (a)(3)(i).

(iii) The signature of the owner, operator, or manager on the DFL, DCL, or DCPL is verification of acceptance of the responsibility required in paragraphs (a)(3)(i) and (ii) of this section.

(4) *Groundfish logbooks and forms.* (i) The Regional Administrator will prescribe and provide groundfish logbooks and forms required under this section for a catcher vessel 60 ft (18.3 m) or greater LOA, a catcher/processor, a mothership, a shoreside processor, and

a buying station (see Table 9 to this part).

(ii) The operator or manager must use these logbooks and forms or obtain approval from the Regional Administrator to use electronic versions of the logbooks and forms.

(iii) The operator or manager of a buying station must maintain a separate DCL for each mothership or shoreside processor to which the buying station delivers groundfish during a fishing year.

(5) *Participant identification information.* The operator or manager must record on all required records, reports, and logbooks, as appropriate:

(i) The name of the catcher vessel, catcher/processor, mothership, shoreside processor, or buying station as displayed in official documentation.

(ii) If a catcher vessel, the Federal fisheries permit number and ADF&G vessel number.

(iii) If a shoreside processor, the Federal processor permit number and ADF&G processor number.

(iv) If a buying station, the name and ADF&G vessel number (if a vessel) of the buying station, and the name, ADF&G processor code, and Federal processor permit number of associated shoreside processor, or the Federal fisheries permit number of the associated mothership.

(v) Except for a DFL, DCL, or DCPL, the following information describing a representative's identification: the representative's name, daytime business telephone number (including area code), and fax or telex number. In addition, if completing a DPR, a VAR, or a mothership or catcher/processor PTR or check-in/check-out report, the representative's COMSAT number.

(vi) If a mothership or catcher/processor, the ADF&G processor code and Federal fisheries permit number.

(vii) Signature of owner, operator, or manager (see paragraph (a)(3)).

(6) *Maintenance of records.* (i) The operator or manager must maintain in English all records, reports, and logbooks in a legible, timely, and accurate manner; if handwritten, in indelible ink; if computer-generated, in a printed paper copy; and based on A.l.t.

(ii) The operator or manager must account for each day of the fishing year in the logbook, starting with January 1 and ending with December 31. Time periods must be recorded consecutively in the logbook.

(A) If a vessel owner or operator is granted reinstatement of a Federal fisheries permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section must be continuous throughout that year, without interruption of records.

(B) If a shoreside processor owner or manager is granted reinstatement of a Federal processor permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section must be continuous throughout that year, without interruption of records.

(iii) When applicable, the operator or manager must record in each report, form, and logbook the following information:

(A) *Page number.* (*1*) Except as provided in paragraph (a)(6)(iii)(A)(*2*) of this section, the operator or manager must number the pages in each logbook consecutively, beginning with page 1 and continuing throughout the logbook for the remainder of the fishing year. If more than one logbook is used in a fishing year, the page numbers should follow the consecutive order of the previous logbook.

(*2*) The manager of a shoreside processor must number the DCPL pages within Part I and Part II separately, beginning with page 1.

(B) *Date,* presented as month-day-year.

(*1*) If a catcher vessel harvesting sablefish or halibut under the IFQ Program (see subpart D of this part) in addition to groundfish and recording more than 1 day on the DFL logsheet, the operator must enter the first day of the harvest at the top of the logsheet and the date of each day in the ''record by set'' and ''discard'' sections of the DFL.

(*2*) If a catcher vessel harvesting groundfish and recording more than 1 day on the DFL logsheet, the operator must enter the first day of the harvest at the top of the logsheet and the date of each day in the ''catch'' and ''discard/donate'' sections of the DFL.

(*3*) If a shoreside processor, the manager must enter the week-ending date of the weekly reporting period at the top of the logsheet and the date of each day of the week in the ''landings'' and ''discard/donate'' sections of the DCPL.

(C) *Time*, in military format to the nearest hour, A.l.t.

(D) *Position coordinates*, latitude and longitude to the nearest minute (optional: record to the nearest second or fraction of minute).

(E) *Original/revised report.* Except for a DFL, DCL, or DCPL, if a report is the first one submitted to the Regional Administrator for a given date, gear type, and reporting area, the report should be labeled, ''ORIGINAL REPORT.'' If a report is a correction to a previously submitted report for a given date, gear type, and reporting area, the report should be labeled, ''REVISED REPORT.''

(F) *Product codes, whole fish codes, discard product codes, and product designations*—(*1*) *General.* To record information in the DFL, DCPL, DCL, DPR, WPR, PTR, and VAR, the operator or manager must use Table 1 to this part to determine product codes, whole fish codes, discard product codes, and product designations for federally managed groundfish.

(*2*) *Codes in discard/donate sections*—(i) *Catcher/processor or mothership.* The operator of a catcher/processor or mothership must record in the discard/donate sections of the DCPL, DPR, and WPR, discard codes 96 or 98; and also code 86 to record number of prohibited species that are donated to charity under a NMFS-sponsored program.

(*ii*) *Shoreside processor.* The manager of a shoreside processor must record in the discard/donate sections of the DCPL, DPR, and WPR, discard codes 96, 98 or 99; and code 86 to record number of prohibited species that are donated to charity under a NMFS-sponsored program.

(*iii*) *Catcher vessel or buying station.* The operator of a catcher vessel or the operator or manager of a buying station must record in the discard/donate sections of the DFL or DCL, respectively, discard codes 96 or 98; whole fish codes 02, 92, 93, and 95; and code 86 to record number of prohibited species that are donated to charity under a NMFS-sponsored program. In addition, the operator of a buying station delivering to a shoreside processor must record code 99 for any discard after delivery from catcher vessels and before delivery to a shoreside processor.

(*3*) *Product code 97.* (*i*) When recording information in a DCPL for products not listed on Table 3 to this part, the operator of a catcher/processor or mothership or the manager of a shoreside processor must record code 97—other retained product and write a description of the product in addition to that code.

(*ii*) Because product code 97 is not a defined product and product recovery rates (PRRs) may vary depending on the product and, thus, are not available in Table 3 to this part to convert product amounts into round weight, the operator or manager must determine the PRR of the product and record the PRR next to the code 97 and product description in the DCPL.

(*4*) *Product code 33.* When recording information in a DCPL, DPR, WPR, or PTR for product code 33—fish oil, the operator of a catcher/processor or mothership or the manager of a shoreside processor must record and report only those amounts of oil that are destined for sale and not include amounts of oil that are stored or burned for fuel onboard.

(*5*) *Product code 41.* When recording information in a DCPL, DPR, or WPR for whole fish destined for offsite fish meal production, the operator of a catcher/processor or mothership or the manager of a shoreside processor must use code 41 as defined in Table 1 to this part. For exceptions on a PTR, see paragraph (g)(1)(i) of this section.

(*6*) *Product codes 04, 05, 51, 54, 55, 57, and 58*—(*i*) *IFQ codes.* Product codes 04, 05, 51, 54, 55, 57, and 58 are reserved for use with IFQ fish products.

(*ii*) *IFQ halibut product codes.* When recording IFQ halibut in a groundfish/IFQ DFL or DCPL, an IFQ landing report, or IFQ shipment report, the operator of a catcher vessel or catcher/processor must use only product codes 04, 05, 54, and 55 as defined in Table 1 to this part.

(*iii*) *IFQ sablefish product codes.* Except for product codes 05, 55, or 86, when recording IFQ sablefish in a

groundfish/IFQ DFL or DCPL, an IFQ landing report, or IFQ shipment report, the operator of a catcher vessel or catcher/processor may use product codes defined in Table 1 to this part.

(*7*) *Discard code 99.* When recording information in a DCPL, DPR, or WPR for discard after delivery and before processing by shoreside processors and buying stations delivering to shoreside processors and in-plant discard of whole groundfish and prohibited species during processing, the manager of a shoreside processor or buying station must use code 99 as defined in Table 1 to this part. For exceptions on a PTR, see paragraph (g)(1)(i) of this section.

(G) *Species codes.* (*1*) To record information in the DFL, DCPL, DCL, DPR, WPR, and PTR, the operator or manager must use Table 2 to this part to determine species codes for federally managed groundfish, federally identified prohibited species, and ADF&G managed fish (marked with an asterisk).

(*2*) All species codes listed on Table 2 to this part for federally managed species must be recorded in the DFL, DCPL, DCL, DPR, WPR, or PTR.

(*3*) (All species codes listed on Table 2 to this part for non-federally managed species may be recorded in the DFL, DCPL, DCL, DPR, WPR, or PTR.

(*4*) Except for species codes 120, 144, 168, 169, 171, and 888, all species codes on Table 2 to this part may be used on ADF&G fish tickets, including the mothership weekly cumulative fish tickets.

(7) *Active and inactive periods*—(i) *Each day of fishing year.* Account for each day of the fishing year, January 1 through December 31, in the DFL, DCL, or DCPL by checking the appropriate box to indicate active and inactive periods as defined under §679.2. The operator or manager must record the first day of the fishing year, January 1, on the first page of the DFL, DCL, or DCPL.

(ii) *Active period*—(A) *Mothership, catcher/processor, or buying station.* Except as provided in paragraph (a)(7)(ii)(C) of this section, if a mothership, catcher/processor, or buying station, use a separate logsheet for each day of an active period.

(B) *Catcher vessel or shoreside processor.* Except as provided in paragraph (a)(7)(ii)(C) of this section, if a catcher vessel or shoreside processor, use a separate logsheet for each day or use one logsheet for up to 7 days.

(C) *Active but not conducting fishing activity.* Use one logsheet to record a time period greater than 1 day when ''active but not conducting fishing activity,'' and indicate the first day and last day of this time period as follows.

(*1*) Indicate in the DFL or catcher/processor DCPL on one logsheet the first day of the period in the ''START'' date box and the last day of the period in the ''END'' date box.

(*2*) Indicate in the DCL and the shoreside processor DCPL on one logsheet the first day of the period in the ''MONTH–DAY–YEAR'' box and the last day of the period in the ''END'' date box.

(*3*) If an active period with no fishing activity extends across two or more successive quarters, the operator or manager must complete two logsheets: The first logsheet to indicate the last day of the first quarter and the next logsheet to indicate the first day of the second quarter.

(iii) *Inactive period.* Use one logsheet to record a time period greater than 1 day when inactive, and indicate the first day and last day of this time period as follows:

(A) Indicate in the DFL or catcher/processor DCPL on one logsheet the first day of an inactive period in the ''START'' date box and the last day of an inactive period in the ''END'' date box.

(B) Indicate in the DCL and the shoreside processor DCPL on one logsheet the first day of an inactive period in the ''MONTH–DAY–YEAR'' box and the last day of an inactive period in the ''END'' date box.

(C) If an inactive period extends across two or more successive quarters, the operator or manager must complete two logsheets: The first logsheet to indicate the last day of the first quarter and the second logsheet to indicate the first day of the second quarter.

(iv) *Fishing activity.* Indicate in the DFL, DCL, or DCPL all fishing activity, which is defined as follows:

(A) If a catcher vessel—harvest or discard of groundfish.

(B) If a catcher/processor—harvest, discard, or processing of groundfish.

(C) If a mothership or shoreside processor—receipt, discard, or processing of groundfish.

(D) If a buying station—receipt, discard, or delivery of groundfish.

(v) *Active and conducting fishing activity.* If in an active period and conducting fishing activity, the operator of a catcher vessel must record in the DFL, the operator or manager of a buying station must record in the DCL, and the operator or manager of a catcher/processor, mothership, or shoreside processor must record in the DCPL, WPR, DPR, and mothership or catcher/processor check-in/check-out report as follows:

(A) *Gear type.* (*1*) The gear type used to harvest the groundfish. If gear type is not an authorized fishing gear as defined at § 679.2, circle OTHER.

(*2*) If a mothership, shoreside processor, or buying station and groundfish are received from the same reporting area but were harvested with more than one gear type; or if a catcher/processor and groundfish were caught in the same reporting area using more than one gear type, the operator or manager must:

(*i*) If a mothership, shoreside processor, or a catcher/processor, use a separate logsheet in the DCPL to record each gear type.

(*ii*) If a buying station, use a separate logsheet in the DCL to record each gear type.

(*iii*) If a mothership, shoreside processor, or a catcher/processor, submit a separate check-in/check-out report, DPR (if required), and WPR for each gear type.

(B) *Reporting Area.* In the DFL, DCL, DCPL, WPR, DPR, mothership or catcher/processor check-in/check-out report, the reporting area code (see Figures 1 and 3 to this part) where gear retrieval, as defined at § 679.2, was completed.

(*1*) If a haul or set occurs in more than one reporting area, record the reporting area code where gear retrieval was completed, regardless of where the majority of the haul or set took place.

(*2*) If a catcher vessel or catcher/processor using trawl gear, record whether catch was harvested in the COBLZ or in the RKCSA.

(*i*) If recording in a DFL or DCPL, use two separate logsheets, the first to record the information from the reporting area that includes the COBLZ or RKCSA and the second to record the information from the reporting area that does not include the COBLZ or RKCSA.

(*ii*) If recording on a WPR, use two separate columns to record the part of the same reporting area that includes the COBLZ or RKCSA and the part that does not include the COBLZ or RKCSA.

(*3*) If a catcher/processor using trawl gear and recording on a check-in/check-out report, the operator must submit a separate check-in/check-out report to record the part of the same reporting area that includes the COBLZ or RKCSA and the part that does not include the COBLZ or RKCSA area.

(C) *Observers.* (*1*) If a mothership or shoreside processor DCPL, a catcher/processor groundfish DCPL, or a catcher vessel groundfish DFL, the number of observers aboard or on site.

(*2*) If a groundfish/IFQ catcher vessel DFL or groundfish/IFQ catcher/processor DCPL, the number of observers aboard, the name of observer, and the observer cruise number.

(D) *Number of crew or crew size.* In a DFL, DCL, DCPL (except shoreside processor), and mothership or catcher/processor WPR, the number of crew, excluding certified observer(s), on the last day of the weekly reporting period.

(E) *CDQ.* In a DFL, DCL, DCPL, WPR, DPR, or check-in/check-out report:

(*1*) If harvest is under a CDQ program, record the CDQ number. If harvest is not under a CDQ program, leave blank.

(*2*) If harvest is under more than one CDQ number, use a separate logsheet for each CDQ number.

(*3*) If a catcher vessel delivering to a shoreside processor and using a groundfish/IFQ DFL, record the CDQ delivery number in the appropriate box. If using a groundfish DFL, record the CDQ delivery number in the blank space in the

''identification'' section of the logsheet.

(*4*) If a shoreside processor or buying station delivering to a shoreside processor, record CDQ delivery number under the catcher vessel's name in the delivery information section of the DCPL or DCL, respectively.

(F) *Experimental fisheries.* If harvest is under an experimental fisheries program, record the experimental fisheries number (e.g., EXP 9801) in the CDQ number block.

(8) *Landings information*—(i) *General.* The manager of a shoreside processor must:

(A) Record and report groundfish landings by species codes and product codes as defined in Tables 1 and 2 to this part for each reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number.

(B) If recording landings on a WPR or DPR, report each groundfish landing only in metric tons to at least the nearest 0.001 mt.

(C) If no landings occurred, write ''NO LANDINGS'' for that day.

(ii) *DCPL.* The manager of a shoreside processor must record in the DCPL:

(A) *Daily landings.* The daily combined scale weight of landings retained for processing from a catcher vessel or from any associated buying station, to the nearest lb or to at least the nearest 0.001 mt. Use a check mark in the appropriate box to indicate whether records are in lbs or in metric tons.

(B) *Weekly landings.* At the end of each weekly reporting period, enter for each species and product code the cumulative total scale weight of landings for that week, summarized separately by reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number. The cumulative total weight is calculated by adding the daily totals for that week.

(9) *Product Information*—(i) *General.* The operator of a catcher/processor or mothership or the manager of a shoreside processor must:

(A) Record and report groundfish products by species codes, product codes, and product designations as defined in Tables 1 and 2 to this part for each reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number.

(B) If recording products on a WPR or DPR or recording products shipped or received on a PTR, the operator or manager must report each groundfish product only in metric tons to at least the nearest 0.001 mt.

(C) (*1*) If groundfish are not received or processed during a day, the operator or manager must write ''no groundfish receipt or production'' on the production section of the DCPL.

(*2*) If groundfish are not received or processed during a weekly reporting period, the manager must submit a WPR (see paragraph (i) of this section) for each week in which no groundfish are received or processed and write ''no groundfish receipt or production this week'' on the production section of the WPR.

(ii) *DCPL.* The operator or manager must record in the DCPL:

(A) *Daily production.* The daily total, balance brought forward (except for shoreside processors), and cumulative total fish product weight for each groundfish product to the nearest lb or to at least the nearest 0.001 mt. Use a check mark in the appropriate box to indicate whether records are in lbs or in metric tons.

(B) *Weekly production.* At the end of each weekly reporting period or prior to the offload or transfer of all fish or fish product from a catcher/processor or mothership if offload or transfer occurs before the end of a weekly reporting period, enter for each species and product code the cumulative total fish product weight for each groundfish product to the nearest lb or to at least the nearest 0.001 mt, summarized separately by reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number. The cumulative total fish product weight is calculated by adding the daily totals and total carried forward (except for a Shoreside Processor DCPL) for that week.

(iii) *Zero amount carried forward.* At the beginning of each weekly reporting period or after the offload or transfer of all fish or fish product onboard if such offload occurs prior to the end of

a weekly reporting period, from a catcher/processor or mothership, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

(10) *Discarded or donated species information.* The operator or manager must record or report discards or donations as follows:

(i) *General.* (A) Record and report prohibited species (see §679.21(b)) and groundfish discards or donations by species and product codes as defined in Tables 1 and 2 to this part for each reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number.

(B) If recording discards or donations on a WPR or DPR, the manager or operator must record:

(*1*) The weekly cumulative total discard or donation for each species and product code of groundfish species, groundfish species group, or Pacific herring in metric tons to at least the nearest 0.001 mt.

(*2*) The weekly cumulative total estimated numbers of discard or donation for each species and product code of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

(C) If there were no discards or donations, write ''NO DISCARDS,'' ''0,'' or ''ZERO'' for that day.

(ii) *Logbook*—(A) *Groundfish and herring.* For each discard or donation of groundfish, groundfish species groups, and Pacific herring, record in the DCPL, DCL, or DFL the date of discard, the estimated daily total, balance brought forward (except for shoreside processor DCPL), and cumulative total estimated fish discards or donations weight to the nearest lb or to at least the nearest 0.001 mt for each fishing trip. Use a check mark in the appropriate box to indicate whether records are in lbs or in metric tons.

(B) *Prohibited species other than herring.* For each discard or donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab, record in the DFL, DCL, or DCPL, the date of discard, the estimated daily total, balance brought forward (except for shoreside processor DCPL), and cumulative total estimated numbers for discards or donations for each fishing trip.

(C) *Cumulative totals.* At the end of each fishing trip, calculate the cumulative total by adding the daily total and balance forward (except for a Shoreside Processor DCPL), summarized separately by reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number.

(D) *Beginning of weekly reporting period.* At the beginning of each weekly reporting period, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

(11) *Contract processing.* The manager of a shoreside processor or operator of a mothership who receives groundfish to be handled or processed under contract for another processor or business entity must report these fish to the Regional Administrator consistently throughout a fishing year using one of the following two methods:

(i) *Combined records.* Record landings (if applicable), discards, and products of contract-processed groundfish routinely in the DCPL, WPR, or DPR without separate identification; or

(ii) *Separate records.* Record landings (if applicable), discards, and products of contract-processed groundfish in a separate DCPL, WPR, or DPR identified by the name, Federal processor permit number or Federal fisheries permit number, and ADF&G processor code of the associated business entity.

(12) *Alteration of records.* (i) The operator, manager, or any other person may not alter or change any entry or record in a logbook, except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible.

(ii) No person except an authorized officer may remove any original page of any logbook.

(13) *Inspection and retention of records*—(i) *Inspection.* The operator of a catcher vessel or catcher/processor or mothership or the manager of a shoreside processor or the operator of a buying station must make all logbooks, reports, forms, and mothership-issued fish tickets required under this section

available for inspection upon the request of an authorized officer for the time periods indicated in paragraph (a)(13)(ii) of this section.

(ii) *Retention of records.* The operator or manager must retain logbooks and forms as follows:

(A) *On site.* On site until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbooks and forms are retained.

(B) *For 3 years.* Except for the operator or manager of a buying station, for 3 years after the end of the fishing year during which the records were made.

(C) *Catcher Vessel.* The operator of a catcher vessel must retain the original (white) copy of all DFLs and a paper copy of the VAR, if applicable.

(D) *Mothership or Shoreside Processor.* The operator of a mothership or the manager of a shoreside processor must retain:

(*1*) The white copy of all DCPLs.

(*2*) A paper copy of all forms submitted to NMFS, including those forms that were originally submitted electronically.

(*3*) The photocopies of DCL yellow copies until the original DCL is received from the associated buying station at the conclusion of fishing or no later than February 1 of the following fishing year.

(*4*) The bound DCLs containing the white logsheets from associated buying stations.

(*5*) The blue DFL copies submitted by operators of catcher vessels through the last day of the fishing year during which the records were made.

(*6*) The white copy of any fish ticket issued to a catcher vessel.

(E) *Catcher/processor.* The operator of a catcher/processor must retain:

(*1*) The white copy of all DCPLs.

(*2*) A paper copy of all forms submitted to NMFS, including those forms that were originally submitted electronically.

(F) *Buying Station.* The operator or manager of a buying station must retain the pink DCL copies for each associated mothership or shoreside processor for 3 years after the end of the fishing year during which the records were made.

(14) *Submittal and distribution of logbooks and forms.* For recordkeeping and reporting in the groundfish fisheries of the EEZ off Alaska, the operator of a catcher vessel, mothership, catcher/processor, or of a buying station delivering to a mothership, or the manager of a shoreside processor or of a buying station delivering to a shoreside processor is required to use the logbooks issued in accordance with paragraph (a)(4) of this section, submit the logsheets to NMFS in accordance with this paragraph (a)(14), and retain the logbooks in accordance with paragraph (a)(13) of this section.

(i) *Submittal of forms.* The operator or manager must submit the check-in report, check-out report, vessel activity report, weekly production report, daily production report, and product transfer report (see Table 9 to this part), as applicable by:

(A) Faxing the NMFS printed form to the fax number on the form; or

(B) Transmitting a data file with required information and forms to NMFS by modem, satellite (specifically INMARSAT standards A, B, or C), or e-mail.

(C) With the approval of the Regional Administrator, using the voluntary electronic reporting format for the check-in report, check-out reports, and WPR.

(ii) *Logbook descriptions.* The copy sets of each logbook are described here:

Type of logbook	Copy sets
(A) Catcher vessel Groundfish/IFQ DFL	White, blue, green, yellow.
(B) Catcher vessel Groundfish DFL	White, blue, yellow.
(C) Catcher/processor Groundfish/IFQ DCPL	White, green, yellow
(D) Catcher/processor Groundfish DCPL	White, yellow.
(E) Mothership DCPL	White, yellow.
(F) Shoreside Processor DCPL	White, yellow.
(G) Buying Station DCL	White, pink, yellow.

(iii) *Logsheet distribution.* The operator or manager must distribute or retain the multiple copies of each logsheet described in paragraph (a)(14)(ii) as follows:

If logsheet color is:	Distribute to:	See paragraph 679.5(a)(14):	Exception, see 679.5
(A) White	Logsheet remains permanently in logbook.		
(B) Yellow	Submit quarterly to NMFS	(iii)(A)	(a)(14)(iii)(A)(*1*).
(C) Blue (catcher vessel only).	Operator submits to buying station, mothership, or shoreside processor that receives the groundfish harvest.	(iii)(B)	(c)(6)(i).
(D) Pink (buying station only).	Operator or manager retains	(iii)(C)	
(E) Green (groundfish/IFQ logbooks only).	For distribution under NMFS/IPHC groundfish/ IFQ logbook program.	(iii)(D)	

(A) *Yellow logsheet.* The operator or manager must submit the yellow copy of each logbook to NMFS on a quarterly basis to: NMFS'' Office of Enforcement, Alaska Region Logbook Program, P.O. Box 21767, Juneau, AK 99802–1767, on the following schedule:

First quarter	By May 1 of that fishing year.
Second quarter	By August 1 of that fishing year.
Third quarter	By November 1 of that fishing year.
Fourth quarter	By February 1 of the following fishing year.

(*1*) *Buying station.* The operator or manager of a buying station must submit upon delivery of catch the yellow DCL copy to the associated mothership or shoreside processor, along with the ADF&G fish tickets for that delivery.

(*2*) *Mothership or shoreside processor.* The operator of a mothership or manager of a shoreside processor must make and retain a photocopy of each yellow DCL logsheet received from an associated buying station and submit the yellow DCL copies to NMFS along with the mothership or shoreside processor DCPL yellow copies.

(*3*) *Groundfish and groundfish/IFQ logbooks (Effective through December 31, 1999).* The operator of a catcher vessel or catcher/processor must submit all of the yellow logsheets both from the groundfish logbook and from the groundfish/IFQ logbook to NMFS.

(B) *Blue discard logsheet, DFL*—(1) *Catcher vessel.* Except when delivering an unsorted codend (see paragraph (c)(6)(i) of this section), the operator of a catcher vessel must submit the blue DFL copy to the buying station, mothership, or shoreside processor that receives the groundfish harvest.

(*2*) *Buying station.* The operator or manager of a buying station must submit upon delivery of catch to an associated mothership or shoreside processor any blue DFL copies received from catcher vessels delivering groundfish to the buying station.

(*C*) *Pink logsheet, DCL.* The operator or manager of a buying station must retain the pink DCL copies for each associated mothership or shoreside processor for 3 years after the end of the fishing year during which the records were made.

(D) *Green logsheet, groundfish/IFQ DFL and catcher/processor DCPL.* The green copies in the groundfish/IFQ DFL and catcher/processor DCPL are to support a separate data collection by the IPHC under the joint NMFS/IPHC logbook program; check with the IPHC for submittal and retention requirements.

(15) *Delivery information for mothership and shoreside processor.* The operator of a mothership or the manager of a shoreside processor must record the following information in the ''delivery information section'' of the Mothership DCPL or Shoreside Processor DCPL:

(i) If groundfish delivery was made by a catcher vessel or buying station, write ''CV'' or ''BS,'' respectively.

(ii) If groundfish delivery is from a catcher vessel, enter YES or NO to indicate whether the blue DFL copies were submitted by the catcher vessel at the time of delivery; if NO, record as follows:

If blue DFL not submitted by catcher vessel, record NO and the letter:	To indicate the catcher vessel
(leave blank; no letter necessary)	Did not give reason for nonsubmittal.
P	Does not have a federal fisheries permit.
P	Is under 60 ft (18.3 m) LOA and does not have a federal fisheries permit.
L	Is under 60 ft (18.3 m) LOA and has a federal fisheries permit.
U	Delivered an unsorted codend.

(iii) Name and ADF&G vessel number (if applicable) of the catcher vessel or buying station delivering the groundfish.

(iv) Date and time (to the nearest hour, A.l.t.) when receipt of groundfish catch is completed.

(v) Estimated total groundfish delivery weight of the groundfish catch to the nearest lb or to the nearest mt.

(vi) ADF&G fish ticket numbers issued to catcher vessels for the weekly reporting period, including the fish ticket numbers issued by an associated buying station.

(vii) If a mothership:

(A) Latitude and longitude (to the nearest minute) of the mothership position when the groundfish catch is received. Option: Record to nearest second or fraction of minute.

(B) Round catch weight of IR/IU pollock and Pacific cod.

(viii) If a shoreside processor and located in a state other than Alaska, the manager must record the fish ticket number issued through that state and write above the number, the name of the state. If a state fish ticket system is not used, the manager must record the catch receipt number with the state written above the number.

(16) *Delivery information for buying station.* The operator or the manager of a buying station must record the following information in the ''delivery information section'' of the Buying Station DCL:

(i) Name and ADF&G vessel number of the catcher vessel delivering the groundfish.

(ii) Date and time (to the nearest hour, A.l.t.) when receipt of groundfish catch is completed.

(iii) Estimated total groundfish delivery weight of the groundfish catch to the nearest lb or to the nearest mt.

(iv) ADF&G fish ticket number issued to the catcher vessel.

(v) Name, ADF&G processor code, and Federal fisheries permit number or Federal processor permit number of the associated mothership or shoreside processor to which groundfish deliveries were made.

(b) *Representative.* The operator of a catcher vessel, mothership, catcher/processor, or buying station delivering to a mothership or manager of a shoreside processor or buying station delivering to a shoreside processor may identify one person to fill out and sign the logbook, to complete the recordkeeping and reporting forms, and to identify the contact person for inquiries from NMFS. Designation of a representative under this paragraph does not relieve the owner, operator, or manager of responsibility for compliance under paragraph (a)(3) of this section.

(c) *Catcher vessel DFL and catcher/processor DCPL.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or catcher/processor must record:

(1) *Pair trawls.* If two catcher vessels are dragging a trawl between them (pair trawl), a separate DFL must be maintained by each vessel. Each vessel operator must log the amount of the catch retained by that vessel and any fish discarded by the vessel.

(2) *Time limit and submittal*—(i) *Catcher vessel DFL.*

(A) The operator of a catcher vessel must record in the DFL:

(*1*) The time, position, and estimated total catch weight of groundfish for each haul or set within 2 hours after gear retrieval.

(*2*) Discard or donation information as described at paragraph (a)(10) of this

section each day on the day they occur; all other information required in the DFL by noon of the day following gear retrieval.

(*3*) Notwithstanding other time limits, all information required in the DFL within 2 hours after the vessel's catch is offloaded.

(B) Except as provided at paragraph (c)(3)(iii)(B)(*1*) of this section, within 2 hours of completion of catch delivery information, the operator of a catcher vessel must submit the blue DFL copies with delivery of the harvest to the operator of a mothership or a buying station delivering to a mothership, or to the manager of a shoreside processor or buying station delivering to a shoreside processor.

(C) The operator must sign the completed DFL logsheets by noon of the day following the week-ending date of the weekly reporting period (see paragraph (a)(3)(iii) of this section).

(ii) *Catcher/processor DCPL.* The operator of a catcher/processor must record in the DCPL:

(A) The time, position, and estimated total catch weight of groundfish for each haul or set within 2 hours after gear retrieval.

(B) Product and discard or donation information as described at paragraphs (a)(9) and (a)(10) of this section each day on the day they occur; all other information required in the DCPL by noon of the day following completion of production.

(C) Notwithstanding other time limits, record all information required in the DCPL within 2 hours after the vessel's catch is offloaded.

(D) The operator must sign the completed DCPL logsheets by noon of the day following the week-ending date of the weekly reporting period (see paragraph (a)(3)(iii) of this section).

(3) *Logbook formats*—(i) *Groundfish/IFQ format.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel at least 60 ft (18.3 m) LOA or a catcher/processor harvesting sablefish or halibut under the IFQ program (see subpart D of this part) in addition to groundfish must record the operator's name and the following information in the groundfish/IFQ DFL or DCPL, respectively:

(A) *Observer information*—(1) *Name of observer.* (Optional, but may be required by the International Pacific Halibut Commission at 50 CFR chapter III (IPHC regulations).)

(*2*) *Observer cruise number.* (Optional, but may be required by IPHC regulations.)

(B) *Gear type.* (1) Check the appropriate box to indicate gear type used to harvest the fish and enter appropriate gear ID. If gear information is the same as the previous page, check the appropriate box instead of re-entering the information.

(*2*) If gear type is pot, enter:

(*i*) The number of pots set.

(*ii*) The number of pots lost (if applicable). (Optional, but may be required by IPHC regulations.)

(*3*) If gear type is hook-and-line, check the appropriate box to indicate whether gear is fixed hook (conventional or tub), autoline, or snap. (Optional, but may be required by IPHC regulations.)

(*4*) If gear type is fixed hook (conventional or tub), autoline, or snap, enter:

(*i*) The length of skate to the nearest foot (optional, but may be required by IPHC regulations).

(*ii*) The size of hooks, hook spacing in feet, and number of hooks per skate (optional, but may be required by IPHC regulations.)

(*iii*) The number of skates set.

(*iv*) The number of skates lost (if applicable) (optional, but may be required by IPHC regulations.)

(*C*) *IFQ permit numbers.* Enter the IFQ permit numbers of the of operator and each IFQ holder aboard.

(*D*) *CDQ information.* The groundfish CDQ number and the halibut CDQ permit number. Write in the groundfish CDQ delivery number in the box under the vessel name.

(*E*) *Set and haul information.* (*1*) The number of set or haul, sequentially by year;

(*2*) The date set (month-day-year), time set (to the nearest hour), and latitude and longitude (to the nearest minute) of gear deployment (begin position);

(*3*) Begin and end buoy or bag numbers (optional, but may be required by IPHC regulations);

(*4*) The date hauled (month-day-year), time hauled (to the nearest hour), and latitude and longitude (to the nearest minute) of gear retrieval (end position);

(*5*) The begin and end gear depths, recorded to the nearest fathom (optional, but may be required by IPHC regulations);

(*6*) Species code for target species;

(*7*) Estimated net weight of IFQ or CDQ halibut catch to the nearest pound (optional, but may be required by IPHC regulations);

(*8*) If CDQ halibut, enter the estimated net weight of catch to the nearest pound separately from IFQ halibut and indicate ''CDQ'' above the amount (optional, but may be required by IPHC regulations);

(*9*) Estimated weight of IFQ sablefish to the nearest pound. Circle appropriate term to indicate whether IFQ sablefish product is Western cut, Eastern cut, or round weight;

(*10*) Number of sablefish;

(*11*) If a catcher vessel, enter the estimated total round catch weight of all species, except sablefish or halibut, to the nearest pound; and

(*12*) If a catcher/processor, enter:

(*i*) The round catch weight of pollock and Pacific cod to the nearest pound or metric ton.

(*ii*) Estimated total round catch weight of all species combined, except sablefish, halibut, Pacific cod, or pollock, to the nearest pound.

(*iii*) When fishing in an IFQ fishery and the fishery for Pacific cod or rockfish is closed to directed fishing in that reporting area as described in §679.20, the operator must record up to and including the maximum retainable bycatch amount for Pacific cod or rockfish as defined in Table 10 or 11 to this part; quantities over this amount must be recorded in the discard or donation section.

(F) *Groundfish/IFQ logbooks (Effective through December 31, 1999).* The operator of a catcher vessel or catcher/processor must record all information in the groundfish DFL or catcher/processor DCPL received at the beginning of 1999 until receipt of the groundfish/IFQ DFL or catcher/processor DCPL, as follows:

(*1*) On the final page of the groundfish logbook, complete the date of receipt, page number, and participant identification information (see paragraph (a)(5) of this section). Write ''transfer to groundfish/IFQ logbook'' across the logsheet.

(*2*) On the first page of the groundfish/IFQ logbook, enter the next consecutive page number, date of receipt, and participant identification (see paragraph (a)(5) of this section), then write ''transferred from groundfish logbook'' across the logsheet.

(ii) *Groundfish format.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor harvesting groundfish must record average number of hooks, if using longline gear, and the following information for each haul or set in the groundfish DFL or DCPL, respectively:

(A) The number of set or haul, sequentially by year;

(B) If the vessel is using hook-and-line gear, the number of skates set. If the vessel is using longline pot or single pot gear, the total number of pots set;

(C) The date (month-day-year), begin time (to the nearest hour) and position coordinates (to the nearest minute) of gear deployment;

(D) The date (month-day-year), end time (to the nearest hour), and position coordinates (to the nearest minute) of gear retrieval;

(E) The average sea depth and average gear depth, recorded to the nearest meter or fathom;

(F) If a catcher/processor, the total round catch weight of pollock and Pacific cod, to the nearest pound or metric ton.

(G) If a catcher vessel, the estimated total round catch weight of all species, to the nearest pound or metric ton.

(H) If a catcher/processor, the estimated total round catch weight of all species except Pacific cod and pollock, to the nearest pound or metric ton.

(iii) *Discard or donation species information*—(A) *Catcher/processor.* The operator of a catcher/processor must record discard or donation information as described in paragraph (a)(10) of this section.

(B) *Catcher vessel.* In addition to the requirements in paragraph (a)(10) of this section, the operator of a catcher vessel must record in the DFL:

(*1*) *Unsorted codends.* If a catcher vessel is using trawl gear and deliveries to a mothership or shoreside processor are unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue DFL copy (discards copy) for that delivery (see paragraph (a)(14)(iv)(C) of this section). The operator must check the box entitled ''unsorted codend'' and must remove and discard the blue DFL copy.

(*2*) *Presorted delivery*. Except as provided at § 679.27(d), if a catcher vessel is using trawl gear and deliveries to a mothership or shoreside processor are presorted at sea or if the catcher vessel has ''bled'' a codend prior to delivery to a mothership, shoreside processor, or buying station, the operator must check the ''presorted delivery'' box, and enter the estimated amount of discards by species in the DFL.

(iv) *Catcher vessel delivery information*. If a catcher vessel, the operator must record in the DFL:

(A) The landing or delivery date (month-day-year).

(B) The ADF&G fish ticket number(s) provided by the operator of the mothership or buying station delivering to a mothership, or the manager of a shoreside processor or buying station delivering to a shoreside processor.

(C) Recipient's name or IFQ registered buyer receiving delivery.

(D) Name of unloading port. If an IFQ landing, see § 679.5(l)(5)(vi) and Table 14 to this part for names of primary ports.

(v) *Catcher/processor product information*. If a catcher/processor, the operator must record product information in the DCPL as set forth in paragraph (a)(9) of this section.

(vi) *Comments.* (Optional.)

(4)–(6) [Reserved]

(d) *Buying station DCL*—(1) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator or manager of a buying station must record discard or donation information in the DCL that:

(i) Are reported on a blue DFL copy by a catcher vessel delivering to a buying station.

(ii) Occur after receipt of harvest from a catcher vessel.

(iii) Occur prior to delivery of harvest to a mothership or shoreside processor.

(2) *Time limits.* The operator or manager of a buying station must record:

(i) Catcher vessel ''delivery information'' within 2 hours after completion of receipt of each groundfish delivery.

(ii) Discard or donation information as described at paragraph (a)(10) of this section:

(A) Each day on the day discards or donations occur:

(*1*) After receipt of harvest from a catcher vessel is completed; and

(*2*) Prior to delivery of harvest to a mothership or shoreside processor.

(B) On the day the blue DFL copy is received from a catcher vessel delivering groundfish to the buying station;

(iii) All other information required in the DCL by noon of the day following the day the receipt of groundfish was completed.

(iv) The operator or manager must sign the completed DCL logsheets by noon of the day following the weekending date of the weekly reporting period (see § 679.5(a)(3)(iii)).

(e) *Mothership DCPL*—(1) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership must record discard or donation information in the DCPL that:

(i) Is reported on a blue DFL copy by a catcher vessel or on a yellow DCL copy by a buying station delivering groundfish to a mothership.

(ii) Occurs on site after receipt of groundfish from a catcher vessel or buying station.

(iii) Occurs during processing of groundfish received from a catcher vessel or buying station.

(2) *Time limits.* The operator of a mothership must record:

(i) Except for records of round weight catch for IR/IU species pollock and Pacific cod, ''delivery information'' in the DCPL within 2 hours after receipt of each groundfish delivery.

(ii) Product information as described at paragraph (a)(9) of this section each day on the day they occur.

(iii) Discard or donation information as described at paragraphs (a)(10) and (e)(1) of this section:

(A) Each day on the day they occur:

(*1*) On site after receipt of groundfish from a catcher vessel.

(*2*) During processing of groundfish.

(B) On the day the blue DFL copy is received from a catcher vessel delivering groundfish to the mothership.

(C) On the day the yellow DCL copy is received from a buying station delivering groundfish to a mothership.

(iv) All other information required in the DCPL by noon of the day following the day of production completion.

(v) The operator must sign the completed DCPL logsheets by noon of the day following the week-ending date of the weekly reporting period (see §679.5(a)(3)(iii)).

(f) *Shoreside processor DCPL*—(1) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the manager of a shoreside processor must record in the DCPL:

(i) The management area (BSAI or GOA) for the product where the groundfish was harvested on each section of the Part II logsheet.

(ii) Discard or donation information in the DCPL that:

(A) Is reported on a blue DFL copy by a catcher vessel or on a yellow DCL copy by a buying station delivering groundfish to a mothership.

(B) Occurs on site after receipt of groundfish from a catcher vessel or buying station.

(C) Occurs during processing of groundfish received from a catcher vessel or buying station.

(iii) If the manager of a shoreside processor receives groundfish and records them as landings in Part IB of the DCPL, and transfers these fish to another processor, the manager must also record these fish in Part II of the DCPL prior to transfer.

(2) *Time limits.* The manager of a shoreside processor must record:

(i) All catcher vessel or buying station ''delivery information'' within 2 hours after completion of receipt of each groundfish delivery.

(ii) Landings and product information as described at paragraphs (a)(8) and (a)(9), respectively, of this section each day on the day they occur.

(iii) Discard or donation information as described at paragraph (a)(10) of this section:

(A) Each day on the day they occur:

(*1*) On site after receipt of groundfish from a catcher vessel.

(*2*) During processing of groundfish.

(B) On the day the blue DFL copy is received from a catcher vessel delivering groundfish to a shoreside processor.

(C) On the day the yellow DCL copy is received from a buying station delivering groundfish to a shoreside processor.

(iv) All other information required in the DCPL by noon of the day following the day of production completion.

(v) The manager must sign the completed DCPL logsheets by noon of the day following the week-ending date of the weekly reporting period (see §679.5(a)(3)(iii) of this part).

(g) *Groundfish Product Transfer Report (PTR)*—(1) *Requirement.* Except as provided in paragraphs (g)(1) (i) through (v) of this section, the operator of a mothership or catcher/processor or the manager of a shoreside processor must record each transfer of groundfish product or donated prohibited species on a separate PTR.

(i) *Product codes 41 and 99.* The operator or manager does not report those fish products, defined as product code 41 in Table 1 to this part, that are destined for offsite fish meal production or those fish products, defined as product code 99 in Table 1 to this part that are subsequently transferred for discard at sea.

(ii) *Bait sales.* The operator or manager may aggregate individual sales or transfers of groundfish to vessels for bait purposes during a day onto one PTR when recording the amount of such bait product leaving a facility that day.

(iii) *Over-the-counter groundfish sales.* The operator or manager may aggregate individual over-the-counter sales of groundfish for human consumption in quantities less than 10 lb (0.0045 mt) per sale during a day onto one PTR when recording the amount of such

over-the-counter product leaving a facility that day.

(iv) *IFQ or CDQ sablefish product.* If the operator of a mothership or catcher/processor or the manager of a shoreside processor possesses a registered buyer permit issued per § 679.4(d)(2), the operator or manager is not required to submit a PTR to document shipment of IFQ or CDQ sablefish product. However, a shipment report as described at paragraph (l)(3) of this section is required for each shipment of IFQ or CDQ sablefish product.

(v) *Wholesale.* The operator or manager may aggregate wholesale sales of groundfish by species during a day onto one PTR when recording the amount of such wholesale product leaving a facility that day. The bills of lading detailing destinations for all of the product must be available for inspection by an authorized officer.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor or manager of a shoreside processor must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) Submit by fax a copy of each PTR to the NMFS Alaska Enforcement Division by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the transfer occurred.

(iii) A PTR is not required to accompany a shipment or offload.

(3) *Information required*—(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership or catcher/processor or the manager of a shoreside processor must record on a PTR:

(A) Page numbers must be numbered consecutively, starting with the first transfer of the fishing year as page 1 and continuing throughout the remainder of the fishing year.

(B) ''RECEIPT,'' if product (including raw fish) is received; ''OFFLOAD,'' if product (including raw fish) is offloaded from a mothership or catcher/processor; ''SHIPMENT,'' if product (including raw fish) is shipped from a shoreside processor.

(C) If a catcher/processor or mothership, the USCG documentation number.

(ii) *Transfer information.* The operator of a catcher/processor or mothership or manager of a shoreside processor must record on each page the following information for each transfer:

(A) *Name.* (*1*) If another vessel is involved with the transfer, the name and call sign of the vessel receiving or delivering groundfish or groundfish products.

(*2*) If transfer is from other than a vessel, line-out ''vessel name'', write in ''processor name'', and record name of processor receiving or delivering groundfish or groundfish products.

(B) *Port of landing.* If a mothership or catcher/processor and the transfer takes place in port, the port of landing and country, if a foreign location.

(C) *Agent.* (*1*) Except as provided in paragraphs (g)(3)(ii)(C)(*2*) and (g)(3)(ii)(C)(*3*) of this section, enter the agent's name, which, for purposes of this section, is defined as the buyer or the distributor.

(*2*) If groundfish bait transfer or sales are aggregated onto a PTR for a given day as described at paragraph (g)(1)(ii) of this section, enter ''fishing vessels.''

(*3*) If groundfish over-the-counter sales are aggregated onto a PTR for a given day as described at paragraph (g)(1)(iii) of this section, enter ''over-the-counter sales.''

(D) *Intended first destination of product.* (*1*) If an offload or shipment, the intended destination of the vessel or agent receiving the groundfish or groundfish product.

(*2*) If an offload or shipment has several destinations, the first intended destination.

(*3*) If offload or shipment has a single destination but requires loading on multiple vans, trucks, or airline flights, the transfer may be recorded on a single PTR page.

(*4*) If groundfish bait sales are aggregated onto a PTR for a given day as described at paragraph (g)(1)(ii) of this section, enter ''bait.''

(*5*) If groundfish over-the-counter sales are aggregated onto a PTR for a given day as described at paragraph (g)(1)(iii) of this section, enter ''over-the-counter sales.''

(E) *Date and time of product transfer*—(*1*) *Start.* Except as provided in paragraphs (g)(3)(*ii*)(E)(*1*)(*i*) and (ii) of this section, the date and time, as described in paragraph (a)(6)(iii) of this section the transfer starts.

(*i*) *Bait sales.* If groundfish bait sales are aggregated onto a PTR for a given day, the transfer start time is the time of the first bait sale.

(*ii*) *Over-the-counter sales.* If groundfish over-the-counter sales are aggregated onto a PTR for a given day, the transfer start time is the time of the first over-the-counter sale.

(*2*) *Finish.* Except as provided in paragraphs (g)(3)(ii)(E)(*2*)(*i*) through (*v*) of this section, the date and time, as described in paragraph (a)(6)(iii) of this section, the transfer is completed.

(*i*) *Individual van or flight.* If shipment is an individual van load or flight, the date and time when each shipment leaves the plant.

(*ii*) *Multiple vans or trucks.* If shipment involves multiple vans or trucks, record date and time when the last van or truck of the day leaves the plant.

(*iii*) *Multiple airline flights.* If shipment involves multiple airline flights, record date and time when the last airline flight shipment of the day leaves the plant.

(*iv*) *Bait sales.* If PTR is for aggregated groundfish bait sales for a given day, the transfer finish time is the time of the last bait sale.

(*v*) *Over-the-counter sales.* If PTR is for aggregated groundfish over-the-counter sales for a given day, the transfer finish time is the time of the last over-the-counter sale.

(F) *Position transferred.* If a catcher/processor or mothership and transfer of product is made at sea, the latitude and longitude of the transfer position in degrees and minutes.

(iii) *Products and quantities offloaded, shipped, or received.* The operator of a catcher/processor or mothership or manager of a shoreside processor must record the following information:

(A) If a catcher/processor or mothership, the harvest zone code of the area in which groundfish were harvested as defined in Table 8 to this part.

(B) The species code and product code for each product transferred as defined in Tables 1 and 2 to this part.

(C) The number of cartons or production units transferred.

(D) The average net weight of one carton for each species and product code in kilograms or lbs.

(E) The total net weight (fish product weight, to the nearest 0.001 mt) of the products transferred.

(iv) *Total or partial offload.* If a catcher/processor or mothership, whether the transfer is a total or partial offload. If partial offload, the total fish product weight, to the nearest 0.001 mt, of the products (by harvest zone, species and product codes) remaining on board after this transfer.

(h) *Check-in/check-out report*—(1) *Applicability*—(i) *Transit between reporting areas.* If a vessel is transiting through a reporting area and is not fishing or receiving fish, a check-in or check-out report is not required from that area.

(ii) *Multiple vessel operations categories*—(A) *Check-in report.* If a catcher/processor is functioning simultaneously as a mothership in the same reporting area, the operator must submit a separate check-in report for each vessel operations category.

(B) *Check-out report.* Upon completion of each activity, the operator must submit a check-out report for each vessel operations category.

(2) *Time limits and submittal, Check-in report (BEGIN message)*—(i) *Catcher/processor*—(A) *Using hook-and-line or pot gear.* (*1*) Before the operator of a catcher/processor using hook-and-line or pot gear sets gear for groundfish in any reporting area except 300, 400, 550, or 690, the operator must submit a check-in report (BEGIN message) by fax to the Regional Administrator.

(*2*) The operator of a catcher/processor using hook-and-line or pot gear may be checked-in to more than one area simultaneously.

(B) *Using other than hook-and-line or pot gear.* (*1*) Before the operator of a catcher/processor using other than hook-and-line or pot gear commences fishing for groundfish in any reporting area except 300, 400, 550, or 690, the operator must submit a check-in report (BEGIN message) by fax to the Regional Administrator.

(*2*) Except as provided in paragraph (h)(2)(i)(C) of this section, the operator of a catcher/processor using other than hook-and-line or pot gear may be checked-in to only one reporting area at a time.

(C) If on the same day a catcher/processor intends to fish in two adjacent reporting areas (an action which would require submittal of check-out reports and check-in reports multiple times a day when crossing back and forth across a reporting area boundary), and the two reporting areas have on that day and time an identical fishing status for every species, the operator must submit to NMFS:

(*1*) A check-in report to the first area prior to entering the first reporting area, and

(*2*) A check-in report to the second area prior to entering the second reporting area.

(*3*) If the catcher/processor remains within 10 nautical miles (18.5 km) of the boundary between the two areas and crosses back and forth between the first and second reporting areas one or more times, a check-out report from either reporting area is not required.

(*4*) If the catcher/processor proceeds in the second reporting area beyond 10 nautical miles (18.5 km) of the boundary between the two areas, the operator must submit a check-out report from the first reporting area per paragraph (h)(3)(i)(B) of this section.

(ii) *Mothership or shoreside processor.* (A) Before a mothership or shoreside processor commences receipt of groundfish from any reporting area except 300, 400, 550, or 690, the operator or manager must submit by fax a check-in report (BEGIN message) to the Regional Administrator.

(B) The operator of a mothership must check-in to the reporting area(s) where groundfish were harvested and may be checked into more than one area simultaneously.

(iii) *Fishing for groundfish CDQ species.* The operator of a catcher/processor or mothership, or the manager of a shoreside processor must submit by fax a check-in report to the Regional Administrator prior to groundfish CDQ fishing for each CDQ group.

(3) *Time limits and submittal Check-out report (CEASE message)*—(i) *Catcher/processor*—(A) *Using hook-and-line or pot gear.* (*1*) If a catcher/processor using hook-and-line or pot gear completes gear retrieval and departs a reporting area, the operator must submit by fax a check-out report to the Regional Administrator within 24 hours after departing that reporting area.

(*2*) If a catcher/processor using hook-and-line or pot gear is checked-in to multiple reporting areas, the operator must submit a check-out report for each reporting area by fax.

(B) *Using other than hook-and-line or pot gear.* Except as provided in paragraph (h)(2)(i)(B)(*3*) of this section, if a catcher/processor using other than hook-and-line or pot gear departs a reporting area, the operator must submit by fax a check-out report to the Regional Administrator within 24 hours after departing a reporting area but prior to checking-in another reporting area.

(ii) *Mothership.* (A) If a mothership receives groundfish from a reporting area, the operator must submit by fax a check-out report to the Regional Administrator within 24 hours after receipt of fish from that reporting area is complete.

(B) If a mothership is checked-in to multiple reporting areas, the operator must submit a check-out report for each reporting area by fax.

(iii) *Shoreside processor.* If a shoreside processor, the manager:

(A) Except as noted in paragraph (h)(3)(iii)(B) of this section, must submit a check-out report by fax to the Regional Administrator within 48 hours after the end of the applicable weekly reporting period that a shoreside processor ceases to process groundfish for the fishing year.

(B) If groundfish will not be received or processed for at least two consecutive weekly reporting periods, the manager may choose one of the following options:

(*1*) Submit a check-out report by fax to the Regional Administrator, or

(*2*) Submit a WPR (see paragraph (i) of this section) for each week in which no groundfish are received or processed and write ''no groundfish receipt or production this week'' on the production section of the WPR.

(iv) *End of fishing year.* If a check-out report has not previously been submitted during a fishing year, the operator or manager must submit a check-out report at the end of that fishing year, December 31.

(v) *Fishing for CDQ species.* The operator of a catcher/processor or mothership or the manager of a shoreside processor must submit a check-out report by fax to the Regional Administrator within 24 hours after groundfish CDQ fishing for each CDQ group has ceased.

(4) *General information.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership or the manager of a shoreside processor must record:

(i) *BEGIN message*—(A) *Mothership.* (*1*) Date (month-day-year) and time (to the nearest hour, A.l.t.) that receipt of groundfish begins.

(*2*) Latitude and longitude of position in degrees and minutes where groundfish receipt begins.

(*3*) Reporting area code where groundfish were harvested by catcher vessel and if using trawl gear, whether groundfish were harvested in the COBLZ or RKCSA area.

(*4*) Primary and secondary species expected to be received the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(*5*) Whether functioning as a mothership or catcher/processor.

(B) *Catcher/processor.* (*1*) Date (month-day-year) and time (to the nearest hour, A.l.t.) that gear is deployed.

(*2*) Latitude and longitude of position in degrees and minutes where gear is deployed.

(*3*) Reporting area code where gear deployment begins, and if using trawl gear, whether catcher/processor is located in the COBLZ or RKCSA area.

(*4*) Primary and secondary species expected to be harvested the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(*5*) Whether functioning as a mothership or catcher/processor.

(C) *Shoreside processor.* (*1*) Date (month-day-year) the facility will begin to receive groundfish.

(*2*) Whether checking in for the first time at the beginning of the fishing year or to restart receipt and processing of groundfish after filing a check-out report.

(ii) *CEASE message*—(A) *Mothership.* Date (month-day-year), time (to the nearest hour, A.l.t.), and latitude and longitude of position in degrees and minutes where the last receipt of groundfish was made.

(B) *Catcher/processor.* Date (month-day-year), time (to the nearest hour, A.l.t.), and latitude and longitude of position in degrees and minutes where the vessel departed the reporting area.

(C) *Shoreside processor.* Date (month-day-year) that receipt of groundfish ceased.

(iii) *Fish or fish product held at plant.* The manager of a shoreside processor must report the weight of all fish or fish products held at the plant in lbs or to the nearest 0.001 mt by species and product codes on each check-in report and on each check-out report.

(i) W*eekly Production Report (WPR)*—(1) *Applicability.*

(i) The operator of a catcher/processor or mothership or the manager of a shoreside processor must submit a WPR for any week the mothership, catcher/processor, or shoreside processor is checked in pursuant to paragraph (h)(2)(i) of this section.

(ii) The operator of a vessel that is authorized to conduct operations as both a catcher/processor and as a mothership must submit separate WPRs to report production and discard as a catcher/processor and production and discard as a mothership.

(2) *Time limits and submittal.* (i) The operator or manager must submit a WPR by fax to the Regional Administrator by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period.

(ii) If still fishing or processing, the operator or manager must submit a WPR at the end of each fishing year (midnight, December 31) regardless of where this date falls within the weekly reporting period. If still fishing or processing, the operator or manager must submit a WPR starting January 1 through the end of the weekly reporting period.

(3) *Information required.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or manager of a shoreside processor must record:

(i) The date (month-day-year) the WPR was completed.

(ii) The primary and secondary target codes for the following week.

(iii) If a mothership or catcher/processor, record the processor type.

(j) *Daily Production Report (DPR)*—(1) *Notification.* If the Regional Administrator determines that DPRs are necessary to avoid exceeding a groundfish TAC or prohibited species bycatch allowance, NMFS may require submission of DPRs from motherships, catcher/processors, and shoreside processors for reporting one or more specified species, in addition to a WPR. NMFS will publish notification in the FEDERAL REGISTER specifying the fisheries that require DPRs and the dates that submittal of DPRs are required.

(2) *Applicability.* (i) If a catcher/processor or mothership is checked in to the specified reporting area and is harvesting, receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the operator must submit a DPR.

(ii) If a shoreside processor is receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the manager must submit a DPR.

(iii) The operator of a catcher/processor or mothership or the manager of a shoreside processor must use a separate DPR for each gear type, processor type, and CDQ number.

(3) *Time limit and submittal.* The operator or manager must submit a DPR by fax to the Regional Administrator by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

(4) *Information required.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or the manager of a shoreside processor must record the processor type.

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Applicability.* Except as noted in paragraph (k)(1)(iv)(A) of this section:

(i) *Seaward boundary of the EEZ off Alaska or the U.S.-Canadian international boundary between Alaska and British Columbia.* The operator of a catcher vessel, catcher/processor, or of a mothership holding a federal fisheries permit issued under this part and carrying fish or fish product must submit a VAR by fax to NMFS Alaska Enforcement Division, Juneau, AK, before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(ii) *GOA Seamounts.* The operator of a catcher vessel, catcher/processor, or of a mothership that is departing to or returning from fishing at the GOA Seamounts regardless of whether fish or fish product is onboard must submit a VAR by fax to NMFS' Alaska Enforcement Division, Juneau, AK, before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(iii) *Russian Zone.* The operator of a catcher vessel, catcher/processor, or of a mothership that is departing to or returning from fishing at the Russian Zone regardless of whether fish or fish product is onboard must submit a VAR by fax to NMFS' Alaska Enforcement Division, Juneau, AK, before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(iv) *IFQ halibut, IFQ sablefish, and Groundfish*—(A) *Only IFQ halibut and/or IFQ sablefish.* If a vessel is carrying only IFQ halibut and/or IFQ sablefish onboard and the operator has received a Vessel Clearance (VC) per paragraph (l)(5)(iii) of this section or has submitted a Vessel Departure Report (VDR) per paragraph (l)(5)(iii)(B) of this section, the operator is not required to submit a VAR.

(B) *IFQ halibut, IFQ sablefish, and Groundfish.* If a vessel is carrying federal groundfish and IFQ halibut or IFQ sablefish, the operator must submit a VAR in addition to a VDR or a VC.

(2) *Information required*—(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of each catcher vessel, catcher/processor, or mothership must record:

(A) If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, the operator must indicate a ''return'' report. ''Return,'' for purposes of this paragraph, means coming back to Alaska.

(B) If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, the operator must indicate a ''depart'' report. ''Depart,'' for purposes of this paragraph, means leaving Alaska.

(C) Port of landing. If no fish on board, indicate first destination.

(D) Whether the vessel is returning from fishing or departing to fish in the Russian Zone.

(E) Date (month-day-year) and time (Greenwich mean time) the vessel will cross the seaward boundary of the EEZ off Alaska or the U.S.-Canadian international boundary between Alaska and British Columbia.

(F) Latitude and longitude of position in degrees and minutes at the point of crossing the seaward boundary of the EEZ off Alaska or U.S.-Canadian international boundary between Alaska and British Columbia.

(ii) *Fish or fish products.* The operator of a catcher vessel, catcher/processor, or mothership must record the fish or fish products on board the vessel when crossing the seaward boundary of the EEZ off Alaska or U.S.-Canadian international boundary as follows:

(A) The harvest zone code of the area in which groundfish were harvested as defined in Table 8 to this part.

(B) The species code and product code for each species on board as defined in Tables 1 and 2 to this part.

(C) The fish product weight of products on board in lbs or to the nearest 0.001 mt.

(l) *IFQ recordkeeping and reporting requirements.* In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title, the following IFQ reports are required, when applicable: prior notices of landing, landing report, shipment report, transshipment authorization, vessel clearance report, and departure report.

(1) *Prior notice of IFQ landing*—(i) *Applicability.* Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify the NMFS Enforcement, Juneau, no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.

(ii) *Time limits.* Prior notice of an IFQ landing must be made to the toll-free telephone number specified on the IFQ permit between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(iii) *Information required.* Prior notice must include the following: Name of the registered buyer(s) who will be responsible for completion and submission of the IFQ Landing Report(s); the location of the landing; vessel identification; estimated weight of the IFQ halibut or IFQ sablefish that will be landed; identification number(s) of the IFQ card(s) that will be used to land the IFQ halibut or IFQ sablefish; and the date and time that the landing will take place.

(iv) *Exemption.* The operator of a category B, C, or D vessel, as defined at §679.40(a)(5), making an IFQ landing of IFQ halibut of 500 lb (0.227 mt) or less of IFQ weight determined pursuant to §679.42(c)(2) and concurrent with a legal landing of salmon is exempt from the prior notice of landing required by this section.

(v) *Revision to prior notice.* The operator of any vessel wishing to land IFQ halibut or IFQ sablefish before the date and time reported in the prior notice or later than 2 hours after the date and time reported in the prior notice must submit a new prior notice of IFQ landing as described in paragraphs (l)(1)(i) through (iii) of this section.

(2) *Landing report*—(i) *Applicability.* A registered buyer must report an IFQ landing within 6 hours after all such fish are landed and prior to shipment

or departure of the delivery vessel from the landing site.

(ii) *Electronic landing report.* (A) Electronic landing reports must be submitted to NMFS Enforcement, Juneau, using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals and printers driven by custom-designed software, as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the registered buyer to locate or procure a transaction terminal and report as required. Waivers from the electronic reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer.

(B) The IFQ cardholder must initiate a landing report by using his or her own magnetic card and personal identification number (PIN).

(C) Once landing operations have commenced, the IFQ cardholder and the harvesting vessel may not leave the landing site until the IFQ account is properly debited. The offloaded IFQ species may not be moved from the landing site until the IFQ landing report is received by NMFS Enforcement, Juneau, and the IFQ cardholder's account is properly debited. A properly concluded transaction terminal receipt or manual landing report receipt received by fax from NMFS Enforcement, Juneau, constitutes confirmation that NMFS received the landing report and that the cardholder's account was properly debited. After the registered buyer enters the landing data in the transaction terminal and a receipt is printed, the IFQ cardholder must sign the receipt. Legible copies of the receipt must be retained by both the registered buyer and the IFQ cardholder pursuant to paragraph (l)(7) of this section.

(iii) *Manual landing report.* (A) If a waiver has been granted pursuant to paragraph (l)(2)(ii) of this section, manual landing instructions must be obtained from NMFS Enforcement, Juneau, at (800) 304–4846 or (907) 586–7163. Completed manual landing reports must be submitted by fax to NMFS Enforcement, Juneau, at (907) 586–7313.

(B) The manual landing report must be signed by the registered buyer, the IFQ cardholder, and the NMFS representative to show that the IFQ cardholder's account was properly debited.

(iv) *Time limits and submittals.* (A) An IFQ landing may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless:

(*1*) Permission to land at a different time is granted in advance by a clearing officer; or

(*2*) IFQ halibut of 500 lb (0.227 mt) or less of IFQ weight determined pursuant to §679.42(c)(2) is landed concurrently with a legal landing of salmon by a category B, C, or D vessel, as defined at §679.40(a)(5).

(B) An IFQ landing report must be completed and the IFQ account(s) properly debited, as defined in paragraph (l)(2)(ii)(C) of this section, within 6 hours after the completion of the IFQ landing.

(v) *Landing verification and inspection.* Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized officers, clearing officers, or observers. Each IFQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

(vi) *Information required.* The registered buyer must enter accurate information contained in a complete IFQ landing report as follows: Date, time, and location of the IFQ landing; name and permit number of the IFQ card holder and registered buyer; the harvesting vessel's ADF&G number; the Alaska State fish ticket number(s) for the landing; the ADF&G statistical area of harvest reported by the IFQ cardholder; if ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder; for each ADF&G statistical area of harvest reported by the IFQ cardholder, the product code landed and initial accurate scale weight made at the time offloading commences for IFQ species sold and retained.

(3) *Shipment report*—(i) *Requirement.* Each registered buyer, other than those conducting dockside sales must:

(A) Complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish from that registered buyer before the fish leave the landing site.

(B) Assure that a shipment report is submitted to, and received by, NMFS Enforcement, Juneau, by fax to (907) 586–7313 or mail to P.O. Box 21767, Juneau, AK 99802–1767, within 7 days of the date shipment commenced.

(C) Assure that a copy of the shipment report or a bill of lading containing the same information accompanies the shipment of IFQ species from the landing site to the first destination beyond the location of the IFQ landing.

(ii) *Information required.* A shipment report must specify the following: Species and product type being shipped, number of shipping units, fish product weight, names of the shipper and receiver, names and addresses of the consignee and consignor, mode of transportation, and intended route.

(iii) *Revision to shipment report.* Each registered buyer must ensure that, if any information on the original Shipment Report changes prior to the first destination of the shipment, a revised shipment report is submitted to NMFS Enforcement, Juneau, clearly labeled ''Revised Shipment Report'' and that the revised shipment report be received by NMFS Enforcement, Juneau, within 7 days of the change.

(iv) *Dockside sale or outside landing—(A) Dockside sale.* (*1*) A registered buyer conducting dockside sales must issue a receipt in lieu of a shipment report, that includes the date of sale or transfer, the registered buyer permit number, and the fish product weight of the IFQ sablefish or halibut transferred to each individual receiving IFQ halibut or IFQ sablefish.

(*2*) A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish to a person who has not been issued a registered buyer permit.

(B) *Outside landing.* A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct an IFQ landing outside an IFQ regulatory area or the State of Alaska to a person who does not hold a registered buyer permit.

(C) *Landing report.* The person making such an IFQ landing as described in paragraph (l)(3)(iv)(A) or (B) of this section must submit an IFQ landing report in the manner prescribed in paragraph (l)(2) of this section before any fish are sold, transferred, or removed from the immediate vicinity of the vessel with which they were harvested.

(4) *Transshipment authorization.* No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence. Requests for authorization must specify the date and location of the transshipment.

(5) *Vessel clearance*—(i) *Applicability.* The vessel operator who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the vessel from a clearing officer and provide the weight of IFQ halibut and IFQ sablefish on board to the clearing officer.

(ii) *Responsibility.* (A) A vessel operator must land and report all IFQ species on board at the same time and place as the first landing of any species harvested during an IFQ fishing trip.

(B) A vessel operator having been granted a vessel clearance must submit an IFQ landing report, required under this section, for all IFQ halibut, IFQ sablefish and products thereof that are on board the vessel at the first landing of any fish from the vessel.

(iii) *Location of clearance*—(A) *State of Alaska.* The vessel operator that obtains prelanding written clearance for the vessel at a port in the State of Alaska must obtain that clearance prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska.

(B) *State other than Alaska, Departure Report.* (1) A vessel operator intending to obtain a prelanding written clearance for the vessel at a port in a state other than Alaska must first provide a departure report to NMFS Enforcement, Juneau, prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska.

(*2*) *Information required.* The departure report must include the weight of the IFQ halibut or IFQ sablefish on board and the intended date and time the vessel will obtain prelanding written clearance at that port in a state other than Alaska.

(C) *Foreign port other than Canada.* A vessel operator who lands IFQ species in a foreign port must first obtain a vessel clearance from a clearing officer located at a primary port in the State of Alaska as described in paragraph (l)(5)(vi) of this section.

(D) *Canadian ports.* No person shall make an IFQ landing in Canada other than at the ports of Port Hardy, Prince Rupert, or Vancouver, British Columbia.

(iv) *Permits and cards.* A vessel operator obtaining a vessel clearance must have a registered buyer permit and one or more IFQ cardholders on board with IFQ holdings equal to or greater than all IFQ halibut and IFQ sablefish on board.

(v) *Inspection.* A vessel for which a vessel operator is seeking clearance is subject to inspection of all fish, logbooks, permits, and other documents on board the vessel at the discretion of the clearing officer.

(vi) *Primary ports.* Unless specifically authorized on a case-by-case basis, vessel clearances will be issued only by clearing officers at the primary ports listed in Table 14 to this part.

(6) *Record retention.* A copy of all reports and receipts required by this section must be retained by registered buyers and be made available for inspection by an authorized officer or a clearing officer for a period of 3 years.

(7) *IFQ cost recovery program*—(i) *IFQ buyer report.*

(A) *Applicability.* An IFQ registered buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Buyer Reportas described in this paragraph (l) and as provided by NMFS for each reorting period, as described at § 679.5 (l)(7)(i)(E), in which the registered buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ registered buyer receives the IFQ fish.

(C) *Information required.* A complete IFQ Buyer Report must include the following information:

(*1*) *IFQ registered buyer identification,* including:

(*i*) Name,

(*ii*) Registered buyer number,

(*iii*) Social Security number or tax identification number,

(*iv*) NMFS person identification number (if applicable),

(*v*) Business address,

(*vi*) Telephone number,

(*vii*) Facsimile telephone number,

(*viii*) Primary registered buyer activity,

(*ix*) Other registered buyer activity, and

(*x*) Landing port location;

(*2*) *Pounds purchased and values paid.* (*i*) The monthly total weights, represented in IFQ equivalent pounds by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*ii*) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*3*) *Value paid for price adjustments.* (*i*) The monthly total U.S. dollar amount of any IFQ retro-payments (correlated by IFQ species, landing month(s), and month of payment) made in the current year to IFQ permit holders for landings made during the previous calendar year;

(*ii*) *Certification,* including the signature of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature.

(D) *Submission address.* A complete IFQ Buyer Report must be received at the following address by mail or facsimile transmission: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668, Facsimile: (907) 586–7354.

(E) *Reporting period.* The reporting period of the IFQ Buyer Report shall extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ permit holder Fee Submission Form*—(A) *Applicability.* An IFQ permit holder who holds an IFQ permit

against which a landing was made must submit to NMFS a complete IFQ permit holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ permit holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Contents of an IFQ Fee Submission Form.* For each of the sections described here, a permit holder must provide the specified information.

(*1*) *Identification of the IFQ permit holder.* An IFQ permit holder with an IFQ landing must accurately record on the identification section of the IFQ Fee Submission Form the following information:

(*i*) The printed name of the IFQ permit holder;

(*ii*) The NMFS person identification number;

(*iii*) The Social Security number or tax ID number of the IFQ permit holder;

(*iv*) The business mailing address of the IFQ permit holder; and

(*v*) The telephone and facsimile number (if available) of the IFQ permit holder.

(*2*) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by §679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(C)(*2*)(*i*) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(*i*) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(*ii*) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(*3*) *Fee calculation section*—(*i*) *Information required.* An IFQ permit holder with an IFQ landing must record the following information on the Fee Calculation page: The name of the IFQ permit holder; the NMFS person identification number; the fee liability amount due for each IFQ permit he or she may hold; the IFQ permit number corresponding to such fee liability amount(s) due; the total price adjustment payment value for all IFQ halibut and/or sablefish (e.g., IFQ retro-payments) received during the reporting period for the IFQ Fee Submission Form as described in §679.5(l)(7)(ii)(D); and the fee liability amount due for such price adjustments.

(*ii*) *Calculation of total annual fee amount.* An IFQ permit holder with an IFQ landing must perform the following calculations and record the results on the Fee Calculation page: add all fee liability amount(s) due for each IFQ permit and record the sum as the sub-total fee liability for all permits; multiply price adjustment payment(s) received for each IFQ species by the fee percentage in effect at the time the payment(s) was received by the IFQ permit holder; add the resulting fee liability amounts due for all price adjustment payments for each IFQ species, then enter the sum as the sub-total fee for price adjustments; add the sub-total fee liability for all permits and the sub-total fee for price adjustments, then enter the resulting sum as the total annual fee amount on the Fee Calculation page and on the Fee Payment page.

(*4*) *Fee payment and certification section*—(*i*) *Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number and must sign

and date and have notarized by a Notary Public the Fee Payment section and record the following: his or her printed name; the total annual fee amount as calculated and recorded on the Fee Calculation page; the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; the remaining balance fee; and the enclosed payment amount.

(*ii*) *Calculation of balance fee payment.* An IFQ permit holder with an IFQ landing must perform the following calculation on the Fee Payment section of the Fee Submission Form: Subtract from the total annual fee amount the total of all pre-payments made (if any) to NMFS and any credits held by NMFS that are applicable to that year's total IFQ cost recovery fees, and record the result as the balance of the fee amount due.

(D) *Reporting Period.* The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date described in § 679.5(l)(7)(ii)(B).

(m) *Consolidated weekly ADF&G fish tickets from motherships*—(1) *Requirement.* (i) In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership must ensure that the combined catch for each catcher vessel is summarized at the end of each weekly reporting period by species on a minimum of one ADF&G groundfish fish ticket when the mothership receives any groundfish from a catcher vessel that is issued a federal fisheries permit under § 679.4. (An ADF&G fish ticket is further described (see § 679.3) at Alaska Administrative Code, 5 AAC Chapter 39.130.)

(ii) Only that information listed here need be completed on the fish ticket for purposes of federal groundfish requirements. Some of the fish ticket fields are defined differently for purposes of federal groundfish requirements.

(2) *Information required from the catcher vessel.* The operator of a mothership must ensure that the following information is written legibly or imprinted from the catcher vessel operator's State of Alaska, Commercial Fisheries Entry Commission (CFEC) permit card on the consolidated weekly ADF&G fish ticket:

(i) *Vessel name.* Name of the catcher vessel delivering the groundfish.

(ii) *Name.* Name of CFEC permit holder aboard the catcher vessel delivering the groundfish. If there is a change in the operator of the same catcher vessel during the same weekly reporting period, complete a fish ticket for each operator.

(iii) *Permit number.* CFEC permit number of CFEC permit holder aboard the catcher vessel delivering the groundfish.

(iv) *ADF&G No.* ADF&G vessel number of the catcher vessel delivering the groundfish.

(v) *ADF&G Statistical area.* The six-digit ADF&G groundfish statistical area denoting the actual area of catch.

(vi) *Permit holder's signature.* The signature of the catcher vessel CFEC permit holder.

(3) *Information required from the mothership.* The operator of a mothership must ensure that the following information is written legibly or imprinted from the mothership's CFEC processor plate card on the consolidated weekly ADF&G fish ticket:

(i) *Processor code.* ADF&G processor code of mothership.

(ii) *Company.* Name of mothership.

(iii) *Port of landing or vessel transshipped to.* Enter ''FLD'', a code which means floating domestic mothership.

(iv) *Fish received by.* The signature of the mothership operator.

(4) *Information required about the catch.* The operator of a mothership must record on the consolidated weekly ADF&G groundfish fish ticket the following information:

(i) *Date landed.* The week-ending date of the weekly reporting period during which the mothership received the groundfish from the catcher vessel.

(ii) *Type of gear used.* Write in one of the following gear types used by the catcher vessel to harvest the groundfish received: Hook and line, pot, non-pelagic trawl, pelagic trawl, jig/troll, other.

(iii) *Code.* Species code for each species from Table 2 to this part, except species codes 120, 144, 168, 169, or 171.

(iv) *Condition code.* The product code from Table 1 to this part which describes the condition of the fish received by the mothership from the catcher vessel. In most cases, this will be product code 01, whole fish.

(v) *Statistical area.* ADF&G 6-digit statistical area in which groundfish were harvested. If there are more than eight statistical areas for a fish ticket in a weekly reporting period, complete a second fish ticket. These statistical areas are defined in a set of charts obtained at no charge from Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game, 211 Mission Road, Kodiak, AK, 99615–6399.

(vi) *Pounds.* The landed weight of each species to the nearest pound. If working in metric tons, convert to pounds using 2205 lb = 1 metric ton before recording on fish ticket.

(5) *Time limit and submittal.* (i) The operator of a mothership must complete the consolidated weekly ADF&G groundfish fish ticket for each catcher vessel by 1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period. A fax copy is not acceptable.

(ii) The operator of a mothership must ensure copy distribution or retention of the multiple copies of each consolidated weekly ADF&G groundfish fish ticket (G series) as follows:

If color of fish ticket is:	Distribute to:	Time limit to submit:
(A) White	Retained by Mothership, see paragraph (a)(13)(ii)(D)(*6*).	
(B) Yellow	Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game, 211 Mission Road, Kodiak, AK, 99615–6399.	Within 30 days after landings are received.
(C) Pink	Catcher vessel delivering groundfish to the mothership.	1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.
(D) Goldenrod	Extra copy.	

(n) *Groundfish CDQ fisheries*—(1) *CDQ delivery report*—(i) *Applicability.* The manager of each shoreside processor and the operator of each vessel of the United States operating solely as a mothership in Alaska State waters and taking deliveries of CDQ or PSQ species from catcher vessels must submit a CDQ delivery report for each delivery of groundfish CDQ or PSQ species.

(ii) *Time limitation and submittal.* The manager or operator as defined at paragraph (n)(1)(i) of this section must submit to the Regional Administrator a CDQ delivery report within 24 hours of completion of each delivery of groundfish CDQ or PSQ species to the processor.

(iii) *Information required.* The manager or operator as defined at paragraph (n)(1)(i) of this section must record the following information on each CDQ delivery report:

(A) *CDQ group information.* CDQ group number as defined at §679.2 and CDQ group name or acronym.

(B) *Processor information.* (*1*) Name and federal processor permit number of the processor as defined at paragraph (n)(1)(i) of this section taking delivery of the CDQ catch.

(*2*) Date delivery report submitted.

(C) *Vessel information.* Enter the name, federal Fisheries Permit number if applicable, and ADF&G number of the vessel delivering CDQ catch. Write ''unnamed'' if the vessel has no name.

(D) *CDQ catch information.* (*1*) Enter the delivery date, CDQ delivery number, harvest gear type, and reporting area of CDQ harvest for each CDQ delivery. If caught with trawl gear, check appropriate box(es) to indicate if catch was made in the CVOA or the COBLZ.

(*2*) Enter groundfish CDQ species that were delivered to the processor as defined at paragraph (n)(1)(i) of this section by product codes and species codes as defined in Tables 1 and 2 to this part, respectively.

(*3*) *Weight.* Report the weight of each CDQ species in metric tons to at least the nearest 0.001 mt.

(E) *Halibut CDQ/IFQ and Sablefish IFQ information.* Report the weight of all halibut CDQ, halibut IFQ, or sablefish IFQ in the CDQ delivery that also

was reported to NMFS on an IFQ landing report by product codes and species codes as defined in Tables 1 and 2 to this part, respectively.

(F) *PSQ information.* Whether PSQ delivered by observed catcher vessels or at-sea discards of PSQ by vessels without observers, record the following information:

(*1*) For each prohibited species other than salmon or crab, enter the species code as defined in Table 2 to this part and the weight to the nearest 0.001 mt.

(*2*) For salmon or crab, enter the species code as defined in Table 2 to this part and the number of animals.

(2) *CDQ catch report*—(i) *Applicability.* The CDQ representative must submit a CDQ catch report for all catch made by catcher/processors or made by catcher vessels groundfish CDQ fishing as defined at § 679.2 and delivered to a shoreside processor, to a vessel of the United States operating solely as a mothership in Alaska State waters, or to a mothership.

(ii) *Time limitation and submittal.* The CDQ representative must submit to the Regional Administrator a CDQ catch report for each delivery of groundfish CDQ species within 7 days of the date a catcher vessel delivered CDQ catch to a processor as defined in paragraph (n)(2)(i) of this section, or within 7 days of the date catcher/processors retrieved gear used to catch CDQ.

(iii) *Information required, all CDQ catch reports.* The CDQ representative must record the following information on each CDQ catch report:

(A) *Vessel information*—(*1*) Select appropriate vessel/gear/delivery type. Based on the type selected, complete each of the specified blocks.

(*2*) Enter the name, Federal fisheries permit number if applicable, and ADF&G number of the vessel delivering CDQ catch. Write ''unnamed'' if the vessel has no name.

(*3*) Indicate gear type used to harvest CDQ catch. If using trawl gear, check the appropriate box(es) to indicate any catch from the CVOA or COBLZ.

(B) *Reporting area.* Enter Federal reporting area in which CDQ catch occurred.

(C) *CDQ group information.* (*1*) CDQ number as defined at § 679.2 and CDQ group name or acronym.

(*2*) Date report submitted.

(iv) *Information required for catcher vessels retaining all groundfish CDQ and delivering to a shoreside processor or a vessel of the United States operating solely as a mothership in Alaska State waters (Option 1 in the CDP).* The CDQ representative must record the following information on each applicable CDQ catch report:

(A) *Delivery information.* (*1*) Name and Federal processor permit number of the shoreside processor or the mothership operating solely in Alaska State waters taking delivery of the CDQ catch.

(*2*) Date catch delivered.

(*3*) Catcher vessel CDQ delivery number.

(B) *Catch information, groundfish CDQ species.* Report the weight in metric tons to at least the nearest 0.001 mt for each groundfish CDQ species retrieved by a catcher/processor or delivered to a processor as defined in paragraph (n)(1)(i) by product code and species code as defined in Tables 1 and 2 to this part, respectively.

(C) *Catch information, halibut IFQ/CDQ and sablefish IFQ.* The CDQ representative must report the weight of all halibut CDQ, halibut IFQ, and sablefish IFQ in the CDQ delivery that also was reported to NMFS on an IFQ landing report in metric tons to at least the nearest 0.001 mt by product code and species code as defined in Tables 1 and 2 to this part, respectively.

(D) *Mortality information, salmon and crab PSQ.* For salmon or crab, enter the species code, as defined in Table 2 to this part, and the number of animals.

(E) *Mortality information, halibut PSQ.* For halibut PSQ catch, enter the round weight to the nearest 0.001 mt, mortality rate, and overall halibut mortality in metric tons to the nearest 0.001 mt. Use the target fishery designations and halibut bycatch mortality rates in the annual final specifications published in the FEDERAL REGISTER under § 679.20(c).

(v) *Information required for catcher/processors, catcher vessels delivering unsorted codends to motherships, and catcher vessels using nontrawl gear and discarding groundfish CDQ at sea (Option 2 in the CDP).* The CDQ representative must record the following information on each applicable CDQ catch report.

(A) *Delivery information.* (*1*) If a catcher vessel delivering unsorted codends to a mothership, the mothership name and federal fisheries permit number, CDQ observer's haul number, and date gear retrieved onboard the mothership as determined by the CDQ observer.

(*2*) If a catcher/processor, the CDQ observer's haul or set number, and date gear retrieved as determined by the CDQ observer.

(*3*) If a catcher vessel using nontrawl gear, discarding groundfish CDQ at sea, and delivering to a shoreside processor or mothership operating solely in Alaska State waters, the processor name, federal processor permit number, CDQ delivery number, and delivery date.

(B) *Catch information, groundfish CDQ species.* (See §679.5(n)(2)(iv)(B).)

(C) *Catch information, halibut IFQ/CDQ and sablefish IFQ* (See §679.5(n)(2)(iv)(C).)

(D) *Mortality information, salmon and crab prohibited species.* (See §679.5(n)(2)(iv)(D).)

(E) *Mortality information, halibut PSQ.* (See §679.5(n)(2)(iv)(E).)

[61 FR 31230, June 19, 1996, as amended at 61 FR 35578, July 5, 1996; 61 FR 41525, Aug. 9, 1996; 61 FR 49981, Sept. 24, 1996; 62 FR 2045, Jan. 15, 1997; 62 FR 17756, Apr. 11, 1997; 62 FR 19690, Apr. 23, 1997; 62 FR 26247, May 13, 1997; 62 FR 26749, May 15, 1997; 63 FR 30399, June 4, 1998; 63 FR 47356, Sept. 4, 1998; 64 FR 61972, Nov. 15, 1999; 64 FR 69673, Dec. 14, 1999; 65 FR 14923, Mar. 20, 2000; 65 FR 41380, July 5, 2000]

EFFECTIVE DATE NOTES: 1. At 63 FR 47356, Sept. 4, 1998, §679.5 was amended by revising paragraphs (a) through (l) and adding paragraph (m), effective Oct. 5, 1998, except paragraph (l)(2)(vi), which contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 65 FR 4538, Jan. 28, 2000, §679.5 was amended by adding paragraphs (a)(4)(iv), (f)(3), (f)(4), (i)(1)(iii), and (o), effective Jan. 21, 2000 through July 20, 2000, except for paragraphs (a)(4)(iv), (f)(3), (i)(1)(iii), and (o) which contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. At 65 FR 39107, 39110, the effective date was extended from July 20, 2000, through Jan. 16, 2001, and paragraphs (a)(4)(iv), (f)(3), (i)(1)(iii), and (o) were amended by removing the phrase ''applicable through July 20, 2000'' and adding in its place ''applicable through January 16, 2001, effective July 20, 2000 through Jan. 16, 2001.

§679.5 Recordkeeping and reporting.

(a) * * *

(4) * * *

(iv) *Shoreside processor electronic logbook report* (applicable through January 16, 2001). The manager of a shoreside processor or stationary floating processor receiving groundfish from AFA catcher vessels must use NMFS-approved software to report catcher vessel deliveries to NMFS as required under this section, and maintain the shoreside processor electronic logbook report describe at paragraph (f)(3), and printed reports required under this section to record the information described at paragraph (f)(4) of this section. The owner of a shoreside processor or stationary floating processor is responsible for compliance and must ensure that the operator, manager, or representative complies with the requirements of this paragraph described at paragraph (f)(3).

* * * * *

(f) *Shoreside processor DCPL.* * * *

(3) *Shoreside processor electronic logbook report* (applicable through January 16, 2001).

(i) *Requirement.* The manager of a shoreside processor or stationary floating processor that receives deliveries of groundfish from one or more AFA catcher vessels must record in and submit a shoreside processor electronic logbook report for each catcher vessel delivery and must print and retain reports required under this section for the duration of the fishing year.

(ii) *Applicability.* (A) Processors that use the shoreside processor electronic logbook to record all deliveries and that receive from NMFS an electronic return receipt for each delivery report are exempt from the requirement to maintain shoreside processor DCPLs as described at paragraph (f)(1) and (2) of this section and are exempt from the requirement to submit quarterly DCPL logsheets to NMFS Enforcement as described at paragraph (a)(14)(iii)(A) of this section.

(B) Processors that submit the shoreside processor electronic logbook report and that receive from NMFS an

electronic return receipt for each delivery report are exempt from the requirement to maintain and submit WPRs to the Regional Administrator as described at paragraph (i) of this section.

(C) Processors that submit the shoreside processor electronic logbook report, receive from NMFS a return receipt for each delivery report, and that are receiving deliveries of fish under a CDQ program are exempt from the requirement to submit CDQ delivery reports to the Regional Administrator as described at paragraph (n)(1) of this section.

(iii) *Time limit and submittal.* (A) The shoreside processor electronic logbook report must be submitted daily to NMFS as an electronic file. A dated return-receipt will be generated and sent by NMFS to the processor confirming receipt and acceptance of the report. Processors must retain the return receipt as proof of report submission. If a processor does not receive a return receipt from NMFS, the processor must contact NMFS within 24 hours for further instruction on submission of electronic logbook reports.

(B) Information entered daily and described at § 679.5(f)(3)(iv)(B) must be entered each day on the day they occur.

(C) Information for each delivery described at § 679.5(f)(3)(iv)(C) must be submitted to NMFS by noon of the following day for each delivery of groundfish.

(iv) *Information required.* The manager must enter the following information into the shoreside processor electronic logbook:

(A) *Information entered once (at software installation) or whenever it changes:*

(*1*) Shoreside processor name, ADF&G processor code, Federal processor permit number, and processor e-mail address;

(*2*) State port code;

(*3*) Name, telephone and FAX numbers of representative.

(B) *Information entered daily:*

(*1*) Indicate if no deliveries or no production;

(*2*) Number of observers on site;

(*3*) Whether harvested in BSAI or GOA;

(*4*) Product by species code, product code, and whether primary, ancillary, or reprocessed/rehandled;

(*5*) Product weight (in lb or mt).

(C) *Information entered for each delivery:*

(*1*) Date fishing began and delivery date;

(*2*) Vessel name (optional) and ADF&G number;

(*3*) Whether delivery is from a buying station;

(*4*) If received from a buying station:

(*i*) Type: vessel, vehicle, or other.

(*ii*) Name of buying station and date received by buying station.

(*iii*) If a vessel, ADF&G number.

(*iv*) If a vehicle, license plate number.

(*v*) If other, description;

(*5*) Whether a discard DFL was received from catcher vessel; if discard DFL not received, reason given;

(*6*) ADF&G fish ticket number of delivery;

(*7*) Management program name and identifying number (whether CDQ, research program, experimental fishery, IFQ, or AFA coop);

(*8*) Gear type of harvester;

(*9*) Landed species by species code, product code, and weight (in pounds or mt) for each species of each delivery;

(*10*) Discard or disposition species by species code, product code, and weight (in pounds or mt) of groundfish or PSC herring;

(*11*) Discard or disposition species by species code, product code, and count (in numbers of animals) of PSC halibut, salmon, or crab;

(*12*) If a CDQ delivery, discard or disposition species by species code, product code, weight (in pounds or mt) and count of PSQ halibut;

(*13*) ADF&G statistical area(s) where fishing occurred; and estimated percentage of total delivered weight corresponding to each area.

(4) *Shoreside processor electronic logbook printed reports.*

(i) The manager must output at the processing plant daily reports of the shoreside processor electronic logbook in two formats generated by the required software onto paper consisting of a Shoreside Logbook Daily Production Report and a Delivery Worksheet. The processor must maintain copies of both of these printouts throughout the fishing year and must make them

available to observers, NMFS personnel, and authorized officers upon request.

(ii) *Information required*—(A) *Delivery worksheet.* Name of processor; ADF&G fish ticket number; management program name (whether CDQ, research program, experimental fishery, IFQ, or cooperative) and identifying number; catcher vessel name (optional) and ADF&G vessel number; date fishing began; delivery date; gear type by harvester; landed species by species code and product code and weight (in lb) for each species of each delivery; ADF&G statistical area and percentage of total delivered weight in each area, Federal reporting area; discard or disposition by species code and product code; weight of each discard or disposition species (in lb), number of each discard or disposition species (in lb) (if groundfish or herring); number of each species discard or disposition species if PSC halibut, salmon or crab.

(B) *Shoreside logbook daily production.* Processor name; Federal processor number; ADF&G processor code; date; number of observers on site; indicate if no production and/or no deliveries; last sent date; last modified date; product by species code and product code whether primary, ancillary, or reprocessed/rehandled; and product weight in lb.

* * * * *

(i) *Weekly production report (WPR).* * * *

(1) * * *

(iii) (applicable through January 16, 2001) If a shoreside processor or stationary floating processor and if using software approved by the Regional Administrator as described in §679.5(f)(3), the shoreside processor or stationary floating processor is exempt from the requirements to submit a WPR.

* * * * *

(o) *Catcher vessel cooperative pollock catch report* (applicable through January 16, 2001).

(1) *Applicability.* The designated representative of each AFA inshore processor catcher vessel cooperative must submit to the Regional Administrator a catcher vessel cooperative pollock catch report detailing each delivery of pollock harvested under the allocation made to that cooperative. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with the applicable recordkeeping and reporting requirements of this section.

(2) *Time limits and submittal.* (i) The cooperative pollock catch report must be submitted by one of the following methods:

(A) An electronic data file in a format approved by NMFS; or

(B) By fax.

(ii) The cooperative pollock catch report must be received by the Regional Administrator by 1200 hours, A.l.t. 1 week after the date of completion of delivery.

(3) *Information required.* The cooperative pollock catch report must contain the following information: Cooperative account number; catcher vessel ADF&G number; inshore processor Federal processor permit number; delivery date; amount of pollock (in lb) delivered plus weight of at-sea pollock discards; ADF&G fish ticket number.

§679.6 Experimental fisheries.

(a) *General.* For limited experimental purposes, the Regional Administrator may authorize, after consulting with the Council, fishing for groundfish in a manner that would otherwise be prohibited. No experimental fishing may be conducted unless authorized by an experimental fishing permit issued by the Regional Administrator to the participating vessel owner in accordance with the criteria and procedures specified in this section. Experimental fishing permits will be issued without charge and will expire at the end of a calendar year unless otherwise provided for under paragraph (e) of this section.

(b) *Application.* An applicant for an experimental fishing permit shall submit to the Regional Administrator, at least 60 days before the desired effective date of the experimental fishing permit, a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purpose and goal of the experiment for which an experimental fishing permit is needed, including a general description of the arrangements for disposition of all species harvested under the experimental fishing permit.

(4) Technical details about the experiment, including:

(i) Amounts of each species to be harvested that are necessary to conduct the experiment, and arrangement for disposition of all species taken.

(ii) Area and timing of the experiment.

(iii) Vessel and gear to be used.

(iv) Experimental design (e.g., sampling procedures, the data and samples to be collected, and analysis of the data and samples).

(v) Provision for public release of all obtained information, and submission of interim and final reports.

(5) The willingness of the applicant to carry observers, if required by the Regional Administrator, and a description of accommodations and work space for the observer(s).

(6) Details for all coordinating parties engaged in the experiment and signatures of all representatives of all principal parties.

(7) Information about each vessel to be covered by the experimental fishing permit, including:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and master.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(8) The signature of the applicant.

(9) The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. Any application that does not include all necessary information will be considered incomplete. An incomplete application will not be considered to be complete until the necessary information is provided in writing. An applicant for an experimental fishing permit need not be the owner or operator of the vessel(s) for which the experimental fishing permit is requested.

(c) *Review procedures.* (1) The Regional Administrator, in consultation with the Alaska Fishery Science Center, will review each application and will make a preliminary determination whether the application contains all the information necessary to determine if the proposal constitutes a valid fishing experiment appropriate for further consideration. If the Regional Administrator finds any application does not warrant further consideration, the applicant will be notified in writing of the reasons for the decision.

(2) If the Regional Administrator determines any application is complete and warrants further consideration, he or she will initiate consultation with the Council by forwarding the application to the Council. The Council's Executive Director shall notify the applicant of a meeting at which the Council will consider the application and invite the applicant to appear in support of the application, if the applicant desires. If the Regional Administrator initiates consultation with the Council, NMFS will publish notification of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal.

(d) *Notifying the applicant.* (1) The decision of the Regional Administrator, after consulting with the Council, to grant or deny an experimental fishing permit is the final action of the agency. The Regional Administrator shall notify the applicant in writing of the decision to grant or deny the experimental fishing permit and, if denied, the reasons for the denial, including:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with the application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect living marine resources, including marine mammals and birds, and their habitat in a significant way.

(iii) Activities to be conducted under the experimental fishing permit would be inconsistent with the intent of this

section or the management objectives of the FMP.

(iv) The applicant has failed to demonstrate a valid justification for the permit.

(v) The activity proposed under the experimental fishing permit could create a significant enforcement problem.

(vi) The applicant failed to make available to the public information that had been obtained under a previously issued experimental fishing permit.

(vii) The proposed activity had economic allocation as its sole purpose.

(2) In the event a permit is denied on the basis of incomplete information or design flaws, the applicant will be provided an opportunity to resubmit the application, unless a permit is denied because experimental fishing would detrimentally affect marine resources, be inconsistent with the management objectives of the FMP, create significant enforcement problems, or have economic allocation as its sole purpose.

(e) *Terms and conditions.* The Regional Administrator may attach terms and conditions to the experimental fishing permit that are consistent with the purpose of the experiment, including, but not limited to:

(1) The maximum amount of each species that can be harvested and landed during the term of the experimental fishing permit, including trip limitations, where appropriate.

(2) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the experimental fishing permit.

(3) The time(s) and place(s) where experimental fishing may be conducted.

(4) The type, size, and amount of gear that may be used by each vessel operated under the experimental fishing permit.

(5) The condition that observers be carried aboard vessels operated under an experimental fishing permit.

(6) Reasonable data reporting requirements.

(7) Such other conditions as may be necessary to assure compliance with the purposes of the experimental fishing permit and consistency with the FMP objectives.

(8) Provisions for public release of data obtained under the experimental fishing permit.

(f) *Effectiveness.* Unless otherwise specified in the experimental fishing permit or superseding notification or regulation, an experimental fishing permit is effective for no longer than 1 calendar year, but may be revoked, suspended, or modified during the calendar year. Experimental fishing permits may be renewed following the application procedures in paragraph (b) of this section.

(g) *Recordkeeping and reporting requirements.* In addition to the recordkeeping and reporting requirements in this section, the operator or manager must comply with requirements at §679.5(a) through (k).

[61 FR 31230, June 19, 1996, as amended at 64 FR 61981, Nov. 15, 1999]

§679.7 Prohibitions.

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:

(a) *Groundfish of the GOA and BSAI*—(1) *Federal fisheries permit.* Fish for groundfish in the GOA or BSAI with a vessel of the United States that does not have on board a valid Federal fisheries permit issued pursuant to §679.4.

(2) *Inseason action or adjustment.* Conduct any fishing contrary to notification of inseason action or adjustment issued under §679.20, §679.21, or §679.25.

(3) *Groundfish Observer Program.* Fish for or process groundfish except in compliance with the terms of the Groundfish Observer Program as provided by subpart E of this part.

(4) *Pollock roe.* Retain pollock roe on board a vessel in violation of §679.20(g).

(5) *Prohibited species bycatch rate standard.* Exceed a bycatch rate standard specified for a vessel under §679.21(f).

(6) *Gear.* Deploy any trawl, longline, single pot-and-line, or jig gear in an area when directed fishing for, or retention of, all groundfish by operators of vessels using that gear type is prohibited in that area, except that this paragraph (a)(6) shall not prohibit:

(i) Deployment of hook-and-line gear by operators of vessels fishing for halibut during seasons prescribed in the

annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title.

(ii) Deployment of pot gear by operators of vessels fishing for crab during seasons governed by the State of Alaska.

(iii) Deployment of jig gear by operators of vessels fishing for salmon during seasons governed by the State of Alaska.

(7) *Inshore-offshore*—(i) (*Applicable through December 31, 2004*). Operate any vessel in the BSAI in more than one of the two categories included in the definition of ''inshore component in the BSAI,'' in §679.2, during any fishing year.

(ii) (*Applicable through December 31, 2004*). Operate any vessel in the BSAI under both the ''inshore component in the BSAI'' and the ''offshore component in the BSAI'' definitions in §679.2 during the same fishing year.

(iii) (*Applicable through December 31, 2001*). Operate any vessel in the BSAI under both the ''inshore component in the GOA'' and the ''offshore component in the BSAI'' or under both the ''offshore component in the GOA'' and the ''inshore component in the BSAI'' definitions in §679.2 during the same fishing year.

(iv) (*Applicable through December 31, 2001*). Operate any vessel in the GOA in more than one of the three categories included in the definition of ''inshore component in the GOA,'' in §679.2, during any fishing year.

(v) (*Applicable through December 31, 2001*). Operate any vessel in the GOA under both the ''inshore component in the GOA'' and the ''offshore component in the GOA'' definitions in §679.2 during the same fishing year.

(vi) (*Applicable through December 31, 2001*). Operate any vessel in the GOA under both the ''inshore component in the GOA'' and the ''offshore component in the BSAI'' or under both the ''offshore component in the GOA'' and the ''inshore component in the BSAI'' definitions in §679.2 during the same fishing year.

(vii) (*Applicable through December 31, 2001*). Operate any vessel that processes pollock or Pacific cod, harvested in a directed fishery for those species, at a single location in Alaska State waters under the ''inshore component in the BSAI'' and the ''inshore component in the GOA'' definitions in §679.2 during the same fishing year.

(8) *Fishing in Donut Hole.* Except as authorized by permit issued pursuant to the section of the Donut Hole Convention implementing legislation authorizing NMFS to issue Donut Hole fishing permits (Public Law 104–43, section 104(d)), it is unlawful for any person to:

(i) Fish in the Donut Hole from a vessel for which a Federal fisheries permit has been issued pursuant to §679.4 during the year for which the permit was issued.

(ii) Possess within the EEZ fish harvested from the Donut Hole on board a vessel for which a Federal fisheries permit has been issued pursuant to §679.4 during the year for which the permit was issued.

(9) *Authorized fishing gear.* Retain groundfish taken with other than authorized fishing gear as defined in §679.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

(10) *Recordkeeping and reporting.* Fail to comply with or fail to ensure compliance with requirements in §679.5.

(11) *Tender vessel.* Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(12) *Prohibited species donation program.* Retain or possess prohibited species, defined at §679.21(b)(1), except as permitted to do so under the PSD program as provided by §679.26 of this part, or as authorized by other applicable law.

(13) *Halibut.* With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for halibut as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title:

(i) Fail to release the halibut outboard a vessel's rails.

(ii) Release the halibut by any method other than—(A) Cutting the gangion.

(B) Positioning the gaff on the hook and twisting the hook from the halibut.

(C) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel.

(iii) Puncture the halibut with a gaff or other device.

(iv) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be stripped from the hook.

(14) *Trawl gear performance standard*—(i) *BSAI.* Use a vessel to participate in a non-CDQ directed fishery for pollock using trawl gear and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

(ii) *GOA.* Use a vessel to participate in a directed fishery for pollock using trawl gear when directed fishing for pollock with nonpelagic trawl gear is closed and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

(15) *Federal Processor Permit.* Receive or process groundfish harvested in the GOA or BSAI by a shoreside processor or vessel of the United States operating solely as a mothership in Alaska State waters that does not have on site a valid Federal processor permit issued pursuant to §679.4(f).

(16) *Retention of groundfish bycatch species.* Exceed the maximum retainable groundfish bycatch amount established under §679.20(e).

(b) *Prohibitions specific to GOA.* Use any gear other than non-trawl gear in the GOA east of 140° W. long. (Southeast Outside District).

(c) *Prohibitions specific to BSAI.* (1) *Incidental salmon.* Discard any salmon taken incidental to a directed fishery for BSAI groundfish by vessels using trawl gear until notified by an observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed as provided in §679.21(c)(1).

(2) *Prohibited species.* Conduct any fishing contrary to a notification issued under §679.21.

(d) *CDQ.* (1) Participate in a Western Alaska CDQ program in violation of this part.

(2) Fail to submit, submit inaccurate information on, or intentionally submit false information on any report, application, or statement required under this part.

(3) Participate as a community in more than one CDP, unless the second CDP is for vessels fishing halibut CDQ only.

(4) Harvest groundfish CDQ on behalf of a CDQ group with a vessel that is not listed as an eligible vessel on an approved CDP for that CDQ group.

(5) For a CDQ group, exceed a CDQ, halibut PSQ, or crab PSQ.

(6) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained.

(7) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained.

(8) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the *C. opilio* Bycatch Limitation Zone after the CDQ group's PSQ for *C. opilio* Tanner crab is attained.

(9) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the Chinook Salmon Savings Area between January 1 and April 15 after the CDQ group's chinook salmon PSQ is attained.

(10) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-chinook salmon PSQ is attained.

(11) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at §679.2, discard any groundfish CDQ species or salmon PSQ before it is delivered to an

eligible processor listed on an approved CDP.

(12) For the operator of a vessel using trawl gear, release CDQ catch from the codend before it is brought on board the vessel and weighed on a scale approved by NMFS under §679.28(b) or delivered to a processor. This includes, but is not limited to, ''codend dumping'' and ''codend bleeding.''

(13) For the operator of a catcher vessel, catch, retain on board, or deliver groundfish CDQ species together with license limitation groundfish.

(14) For the operator of a catcher/processor, catch groundfish CDQ species together with license limitation groundfish in the same haul, set, or pot.

(15) For the operator of a catcher/processor or a catcher vessel required to carry a CDQ observer, combine catch from two or more CDQ groups in the same haul or set.

(16) Use any groundfish CDQ species as a basis species for calculating retainable bycatch amounts under §679.20.

(17) For the operator of a catcher/processor using trawl gear or a mothership, harvest or take deliveries of CDQ or PSQ species without a valid scale inspection report signed by an authorized scale inspector under §679.28(b)(2) on board the vessel.

(18) For the operator of a vessel required to have an observer sampling station described at §679.28(d), harvest or take deliveries of CDQ or PSQ species without a valid observer sampling station inspection report issued by NMFS under §679.28(d)(8) on board the vessel.

(19) For the operator of a catcher/processor using trawl gear or a mothership, sort, process, or discard CDQ or PSQ species before the total catch is weighed on a scale that meets the requirements of §679.28(b), including the daily test requirements described at §679.28(b)(3).

(20) For the manager of a shoreside processor or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under §679.28(c), fail to weigh catch on a scale that meets the requirements of §679.28(c).

(21) For a CDQ representative, use methods other than those approved in the CDP to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report.

(22) For a CDQ group, report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve if that sablefish CDQ was caught with fishing gear other than fixed gear.

(23) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, discard sablefish harvested with fixed gear.

(24) For a CDQ group, fail to ensure that all vessels and processors listed as eligible on the CDQ group's approved CDP comply with all regulations in this part while fishing for CDQ.

(25) Fail to comply with the requirements of a CDP.

(e) [Reserved]

(f) *IFQ fisheries.* (1) Fail to submit, or submit inaccurate information on, any report, application, or statement required under this part.

(2) Intentionally submit false information on any report, application, or statement required under this part.

(3)(i) *Halibut.* Retain halibut caught with fixed gear without a valid IFQ or CDQ permit and without an IFQ or CDQ card in the name of an individual aboard.

(ii) *Sablefish.* Retain sablefish caught with fixed gear without a valid IFQ permit and without an IFQ card in the name of an individual aboard, except as provided under an approved CDP.

(4) Except as provided in §679.5(l)(3), retain IFQ halibut or IFQ sablefish on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and IFQ regulatory area in which the vessel is deploying fixed gear, and that is currently held by all IFQ card holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title and §679.5.

(5) Possess, buy, sell, or transport IFQ or CDQ halibut or IFQ sablefish harvested or landed in violation of any provision of this part.

(6) Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing without an IFQ or CDQ card in the name of the individual making the landing.

(7) Possess on a vessel or land IFQ sablefish concurrently with non-IFQ sablefish, except that CDQ sablefish may be possessed on a vessel and landed concurrently with IFQ sablefish.

(8) Discard Pacific cod or rockfish that are taken when IFQ halibut or IFQ sablefish are on board, unless Pacific cod or rockfish are required to be discarded under §679.20 or unless, in waters within the State of Alaska, Pacific cod or rockfish are required to be discarded by laws of the State of Alaska.

(9) Harvest on any vessel more IFQ halibut or IFQ sablefish than are authorized under §679.42.

(10) Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing other than directly to (or by) a registered buyer.

(11) Discard halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ card holder aboard holds unused halibut or sablefish IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating, unless:

(i) Discard of halibut is required as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title;

(ii) Discard of sablefish is required under §679.20 or, in waters within the State of Alaska, discard of sablefish is required under laws of the State of Alaska; or

(iii) Discard of halibut or sablefish is required under other provisions.

(12) Make an IFQ landing without prior notice of landing and before 6 hours after such notice, except as provided in §679.5.

(13) Possess processed and unprocessed IFQ species on board a vessel during the same trip except when fishing exclusively with IFQ derived from vessel category A QS;

(14) Violate any other provision under subpart D of this part.

(15) Process fish on board a vessel on which a person aboard has unused IFQ derived from QS issued to vessel categories B, C, or D, except as provided in §679.42(k) of this part;

(g) *Groundfish Observer Program.* (1) Forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(4) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties.

(5) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(6) Fish for or process fish without observer coverage required under subpart E of this part.

(7) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(h) *High Seas Salmon Fisheries.* (1) Fish for, take, or retain any salmon in violation of the North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1035 or this part.

(2) Engage in fishing for salmon in the High Seas Salmon Management Area except to the extent authorized by §679.4(h).

(i) *License Limitation Program*—(1) *Number of licenses.* (i) Hold more than 10 groundfish licenses in the name of that person at any time, except as provided in paragraph (i)(1)(iii) of this section;

(ii) Hold more than five crab species licenses in the name of that person at any time, except as provided in paragraph (i)(1)(iii) of this section; or

(iii) Hold more licenses than allowed in paragraphs (i)(1)(i) and (i)(1)(ii) of this section unless those licenses were issued to that person in the initial distribution of licenses. Any person who receives in the initial distribution more licenses than allowed in paragraphs (i)(1)(i) and (i)(1)(ii) of this section shall have no transfer applications for receipt of additional licenses approved until the number of licenses in the name of that person is less than the numbers specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this section; furthermore, when a person becomes eligible to receive licenses by transfer through the provisions of this paragraph, that person is subject to the provisions in paragraphs (i)(1)(i) and (i)(1)(ii) of this section;

(2) Conduct directed fishing for license limitation groundfish without an original valid groundfish license, except as provided in § 679.4(k)(2);

(3) Conduct directed fishing for crab species without an original valid crab species license, except as provided in § 679.4(i)(2);

(4) Process license limitation groundfish on board a vessel without an original valid groundfish license with a Catcher/processor designation;

(5) Process crab species on board a vessel without an original valid crab species license with a Catcher/processor designation;

(6) Use a license on a vessel that has an LOA that exceeds the MLOA specified on the license;

(7) Lease a groundfish or crab species license.

[61 FR 31230, June 19, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 679.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE 1: At 65 FR 3898, Jan. 25, 2000, § 679.7 was amended by suspending paragraph (b) and adding paragraph (j), effective Jan. 20, 2000, through July 19, 2000. At 65 FR 36795, June 12, 2000, the effective date was extended to Dec. 31, 2000. For the convenience of the user, the added text follows:

§ 679.7 Prohibitions.

* * * * *

(j) *Prohibitions specific to the GOA (applicable through July 19, 2000)*—(1) *Southeast Outside trawl closure.* Use any gear other than non-trawl gear in the GOA east of 140° W long.

(2) *Catcher vessel trip limit for pollock.* Retain on board a catcher vessel at any time, more than 300,000 pounds (136 mt) of unprocessed pollock.

(3) *Tender vessel restrictions for pollock.*—(i) Operate as a tender vessel east of 157°00′ W long. for pollock harvested in the GOA.

(ii) Operate as a tender vessel west of 157°00′ W long. while retaining on board at any time more than 600,000 lb (272 mt) of unprocessed pollock.

EFFECTIVE DATE NOTE 2: At 65 FR 4539, Jan. 28, 2000, § 679.7 was amended by adding paragraph (k), effective Jan. 21, 2000, through July 20, 2000. At 65 FR 39107, June 23, 2000, the effective date was extended through Jan. 16, 2001. For the convenience of the user, the added text follows:

§ 679.7 Prohibitions.

* * * * *

(k) *Prohibitions specific to the AFA.* It is unlawful for any person to do any of the following:

(1) *Catcher/processors.*

(i) *Permit requirement.* Use a catcher/processor to engage in directed fishing for non-CDQ BSAI pollock without a valid AFA catcher/processor permit on board the vessel.

(ii) *Fishing in the GOA.* Use an unrestricted AFA catcher/processor to fish for any species of fish in the GOA.

(iii) *Processing BSAI crab.* Use an unrestricted AFA catcher/processor to process any species of crab harvested in the BSAI.

(iv) *Processing GOA groundfish.* Use an unrestricted AFA catcher/processor to process any groundfish harvested in Statistical Area 630 of the GOA.

(v) *Directed fishing after a sideboard closure.* Use an unrestricted AFA catcher/processor to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under §679.20(d)(1)(iv) or §679.21(e)(3)(v).

(vi) *Catch weighing*—(A) *Unrestricted AFA catcher/processors.* Use an unrestricted AFA catcher processor to process any groundfish that was not weighed on a NMFS-certified scale.

(B) *Restricted AFA catcher processors.* Use a restricted AFA catcher processor to process any pollock harvested in the BSAI directed pollock fishery that was not weighed on a NMFS-certified scale.

(2) *Motherships.*

(i) *Permit requirement.* Use a mothership to process pollock harvested by an AFA catcher vessel with an inshore or mothership sector endorsement in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA permit on board the vessel.

(ii) *Cooperative processing endorsement.* Use an AFA mothership to process groundfish harvested by a fishery cooperative formed under §679.60 unless the AFA mothership permit contains a valid cooperative pollock processing endorsement.

(iii) *Catch weighing requirement.* Use an AFA mothership to process groundfish harvested in the BSAI or GOA that was not weighed on a NMFS-certified scale.

(3) *Shoreside processors and stationary floating processors.*

(i) *Permit requirement.* Use a shoreside processor or stationary floating processor to process groundfish harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA inshore processor permit at the facility or vessel.

(ii) *Cooperative processing endorsement.* Use a shoreside processor or stationary floating processor required to have an AFA inshore processor permit to process groundfish harvested by a fishery cooperative formed under §679.61 unless the AFA inshore processor permit contains a valid cooperative pollock processing endorsement.

(iii) *Restricted AFA inshore processors.* Use an AFA inshore processor with a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BSAI directed pollock fishery in any one year.

(iv) *Single geographic location requirement.* Use an AFA inshore processor to process pollock harvested in the BSAI directed pollock fishery at a location other than the single geographic location defined as follows:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors.* A location within Alaska State waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(v) *Catch weighing requirement.* Use an AFA inshore processor to process groundfish harvested in the BSAI or GOA that was not weighed on a scale certified by the State of Alaska.

(4) *Catcher vessels*—(i) Use a catcher vessel to engage in directed fishing for non-CDQ BSAI pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore) unless the vessel has a valid AFA catcher vessel permit on board that contains an endorsement for the sector of the BSAI pollock fishery in which the vessel is participating.

(ii) Use an AFA catcher vessel to retain any BSAI crab species unless the catcher vessel's AFA permit contains a crab sideboard endorsement for that crab species.

(iii) Use an AFA catcher vessel to engage in directed fishing for a groundfish species or species group in the BSAI or GOA after the Regional Administrator has issued an AFA catcher vessel sideboard directed fishing closure for that groundfish species or species group under §679.20(d)(1)(iv), §679.21(d)(8) or §679.21(e)(3)(iv), if the vessel's AFA permit does not contain a sideboard exemption for that groundfish species or species group.

(5) *AFA inshore fishery cooperatives*—(i) *Quota overages.* Use an AFA catcher

vessel listed on an AFA inshore cooperative fishing permit to harvest non-CDQ pollock in excess of the cooperative's annual allocation of pollock specified under § 679.61.

(ii) *Liability.* An inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock TAC. The owners and operators of all vessels listed on the cooperative fishing permit are responsible for ensuring that all cooperative members comply with all applicable regulations contained in part 679. The owners and operators will be held jointly and severally liable for overages of an annual cooperative allocation, and for any other violation of these regulations committed by a member vessel of a cooperative.

(6) *Crab processing limits.* It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity under § 679.64. The owners and operators of the individual entities comprising the AFA inshore or mothership entity will be held jointly and severably liable for any overages of the AFA inshore or mothership entity's crab processing sideboard cap.

§ 679.8 Facilitation of enforcement.

See § 600.740 of this chapter.

§ 679.9 Penalties.

See § 600.735 of this chapter.

Subpart B—Management Measures

§ 679.20 General limitations.

This section applies to vessels engaged in directed fishing for groundfish in the GOA and BSAI.

(a) *Harvest limits*—(1) *OY.* The OY for BSAI and GOA target species and the ''other species'' category is a range that can be harvested consistently with this part, plus the amounts of ''nonspecified species'' taken incidentally to the harvest of target species and the ''other species'' category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

(i) *BSAI.* The OY for groundfish in the BSAI regulated by this section and by part 600 of this chapter is 1.4 to 2.0 million mt.

(ii) *GOA.* The OY for groundfish in the GOA regulated by this section and by part 600 of this chapter is 116,000 to 800,000 mt.

(2) *TAC.* NMFS, after consultation with the Council, will specify and apportion the annual TAC and reserves for each calendar year among the GOA and BSAI target species and the ''other species'' categories. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c) of this section. The sum of the TACs so specified must be within the OY range specified in paragraph (a)(1) of this section.

(3) *Annual TAC determination.* The annual determinations of TAC for each target species and the ''other species'' category, and the reapportionment of reserves may be adjusted, based upon a review of the following:

(i) *Biological condition of groundfish stocks.* Resource assessment documents prepared annually for the Council that provide information on historical catch trend; updated estimates of the MSY of the groundfish complex and its component species groups; assessments of the stock condition of each target species and the ''other species'' category; assessments of the multispecies and ecosystem impacts of harvesting the groundfish complex at current levels, given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

(ii) *Socioeconomic considerations.* Socioeconomic considerations that are consistent with the goals of the fishery management plans for the groundfish fisheries of the BSAI and the GOA, including the need to promote efficiency in the utilization of fishery resources, including minimizing costs; the need to manage for the optimum marketable size of a species; the impact of groundfish harvests on prohibited species and the domestic target fisheries that utilize these species; the desire to enhance

depleted stocks; the seasonal access to the groundfish fishery by domestic fishing vessels; the commercial importance of a fishery to local communities; the importance of a fishery to subsistence users; and the need to promote utilization of certain species.

(4) *Sablefish TAC*—(i) *GOA Eastern Area.* Vessels in the Eastern Area of the GOA using trawl gear will be allocated 5 percent of the sablefish TAC for bycatch in other trawl fisheries.

(ii) *GOA Central and Western Areas*—(A) *Hook-and-line gear.* Vessels in the Central and Western Areas of the GOA using hook-and-line gear will be allocated 80 percent of the sablefish TAC in each of the Central and Western areas.

(B) *Trawl gear.* Vessels using trawl gear will be allocated 20 percent of the sablefish TAC in these areas.

(iii) *Bering Sea subarea*—(A) *Hook-and-line or pot gear.* Vessels in the Bering Sea subarea using hook-and-line or pot gear will be allocated 50 percent of each TAC for sablefish.

(B) *Trawl gear.* Vessels in the Bering Sea subarea using trawl gear will be allocated 50 percent of each TAC for sablefish.

(iv) *Aleutian Islands subarea*—(A) *Hook-and-line or pot gear.* Vessels in the Aleutian Islands subarea using hook-and-line or pot gear will be allocated 75 percent of each TAC for sablefish.

(B) *Trawl gear.* Vessels in the Aleutian Islands subarea using trawl gear will be allocated 25 percent of each TAC for sablefish.

(5) *Pollock TAC*—(i) *BSAI*—(A) *Seasonal allowances.* The TAC of pollock in each subarea or district of the BSAI will be divided, after subtraction of reserves, into two allowances. The first allowance will be available for directed fishing from 0001 hours Alaska local time (A.l.t.) January 1 through 1200 hours, A.l.t. , April 15. The second allowance will be available for directed fishing from 1200 hours, A.l.t., September 1 through 1200 hours A.l.t., November 1, of each fishing year. Within any fishing year, unharvested amounts of the first allowance will be added to the second allowance, and harvests in excess of the first allowance will be deducted from the second allowance.

(ii) *GOA*—(A) *Apportionment by area.* The TAC for pollock in the combined GOA Western and Central Regulatory Areas will be apportioned among statistical areas 610, 620, and 630 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys.

(B) *Seasonal allowances.* Each apportionment will be divided into three seasonal allowances of 25 percent, 35 percent, and 40 percent of the apportionment, respectively, corresponding to the three fishing seasons defined at § 679.23(d)(2).

(6) *Inshore-offshore apportionments*—(i) *BSAI pollock (applicable through December 31, 2004).* The apportionment of pollock in each BSAI subarea or district and season between the inshore component in the BSAI and the offshore component in the BSAI will be the same as that specified in section 206(b) of the American Fisheries Act.

(ii) *GOA pollock (applicable through December 31, 2001).* The apportionment of pollock in all GOA regulatory areas and for each season allowance described in paragraph (a)(5)(ii) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(iii) *GOA Pacific cod (applicable through December 31, 2001).* The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels catching Pacific cod for processing by the offshore component in the GOA.

(7) *Pacific cod TAC, BSAI*—(i) *TAC by gear.* (A) The BSAI TAC of Pacific cod, after subtraction of reserves, will be allocated 2 percent to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear.

(B) The portion of Pacific cod TAC allocated to trawl gear under paragraph (a)(7)(i)(A) of this section will be further allocated 50 percent to catcher vessels and 50 percent to catcher/processors as defined for the purposes of recordkeeping and reporting at § 679.2.

(C) *Allocations among vessels using hook-and-line or pot gear (Applicable through December 31, 2003).* (*1*) The Regional Administrator annually will estimate the amount of Pacific cod taken as incidental catch in directed fisheries for groundfish other than Pacific cod by vessels using hook-and-line or pot gear and deduct that amount from the portion of Pacific cod TAC annually allocated to hook-and-line or pot gear under paragraph (a)(7)(i)(A) of this section. The remainder will be further allocated as directed fishing allowances as follows:

(*i*) 80 percent to catcher/processor vessels using hook-and-line gear;

(*ii*) 0.3 percent to catcher vessels using hook-and-line gear;

(*iii*) 18.3 percent to vessels using pot gear; and

(*iv*) 1.4 percent to catcher vessels less than 60 ft LOA that use either hook-and-line or pot gear.

(*2*) Harvests of Pacific cod made by catcher vessels less than 60 ft LOA using pot gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section until vessels using pot gear have harvested the 18.3 percent allocated to all vessels using pot gear under paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section.

(*3*) Harvests of Pacific cod made by catcher vessels less than 60 ft LOA using hook-and-line gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section until catcher vessels using hook-and-line gear have harvested the 0.3 percent allocated to all catcher vessels using hook-and-line gear under paragraph (a)(7)(i)(C)(*1*)(*ii*) of this section.

(D) The Regional Administrator may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using trawl gear, jig gear, hook-and-line gear, or pot gear.

(ii) *Unused gear allocations*—(A) *Reallocation within the trawl sector.* If, during a fishing year, the Regional Administrator determines that either trawl catcher vessels or trawl catcher/processors will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraph (a)(7)(i) or (a)(7)(ii)(B) of this section, NMFS will first make the projected unused amount of Pacific cod available to the other trawl vessel sector before any reallocation to vessels using other gear types.

(B) *Reallocation among vessels using hook-and-line or pot gear.* If, during a fishing year, the Regional Administrator determines that catcher vessels using hook-and-line gear or vessels less than 60 ft LOA using hook-and-line or pot gear will not be able to harvest the directed fishing allowance of Pacific cod allocated to those vessels under paragraphs (a)(7)(i)(C)(*1*)(*ii*) or (a)(7)(i)(C)(*1*)(*iv*) of this section, NMFS may reallocate the projected unused amount of Pacific cod as a directed fishing allowance to catcher/processor vessels using hook-and-line gear through notification in the FEDERAL REGISTER.

(C) *Reallocation between vessels using trawl or non-trawl gear.* If, during a fishing year, the Regional Administrator determines that vessels using trawl gear, hook-and-line gear, pot gear or jig gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i)(A), (a)(7)(i)(B) or (a)(7)(i)(C) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the FEDERAL REGISTER, except as provided below:

(*1*) *Reallocation of TAC specified for jig gear.* On September 15 of each year, the Regional Administrator will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig gear only to vessels using hook-and-line or pot gear through notification in the FEDERAL REGISTER.

(*2*) *Reallocation of TAC to catcher/processor vessels using hook-and-line gear or vessels using pot gear.* Any unharvested amounts of Pacific cod TAC that are reallocated from vessels using trawl or jig gear to catcher/processor vessels using hook-and-line gear or vessels using pot gear to increase directed allowances established under paragraphs (a)(7)(i)(C)(*1*)(*i*) or (a)(7)(i)(C)(*1*)(*iii*) of this section, will be apportioned so that catcher/processor vessels using

hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of any such reallocation.

(iii) *Seasonal allowances*—(A) *Time periods.* NMFS, after consultation with the Council, may divide the directed fishing allowances allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section among the following three periods: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

(B) *Factors to be considered.* NMFS will base any seasonal allowance of the Pacific cod allocation to vessels using hook-and-line and pot gear on the following information:

(*1*) Seasonal distribution of Pacific cod relative to prohibited species distribution.

(*2*) Variations in prohibited species bycatch rates in the Pacific cod fisheries throughout the fishing year.

(*3*) Economic effects of any seasonal allowance of Pacific cod on the hook-and-line and pot-gear fisheries.

(C) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

(8) *BSAI Atka mackerel*—(i) *Jig gear.* Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the following criteria:

(A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;

(B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and

(C) The extent to which the jig-gear allocation will support the development of a jig-gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

(ii) *Other gears.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation and reserves, will be allocated to vessels using other authorized gear types.

(A) *Seasonal allowances.* The Atka mackerel TAC specified for each subarea or district of the BSAI will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) *Overages and underages.* Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

(9) *BSAI shortraker rockfish and rougheye rockfish.* After subtraction of reserves, the TAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea will be allocated 30 percent to vessels using nontrawl gear and 70 percent to vessels using trawl gear.

(10) *All other groundfish TAC.* The initial TAC for each target species and the ''other species'' category will be 85 percent of the TAC as provided under paragraph (b) of this section.

(b) *Reserves*—(1) *BSAI*—(i) *General.* Fifteen percent of the BSAI TAC for each target species and the ''other species'' category, except the hook-and-line and pot gear allocation for sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC is apportioned for each target species and the ''other species'' category, except the hook-and-line and pot gear allocation for sablefish.

(ii) *Nonspecified reserve.* The reserve is not designated by species or species group, and any amount of the reserve may be apportioned to a target species, except the hook-and-line gear and pot gear allocation for sablefish, or the ''other species'' category, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species or the ''other species'' category.

(iii) *CDQ reserve*—(A) *Groundfish CDQ reserve.* Except as limited by § 679.31(a)

of this part, one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section is apportioned to the groundfish CDQ reserve.

(B) *Fixed gear sablefish CDQ reserves.* Twenty percent of the fixed gear allocation of sablefish established by paragraph (a)(4)(iii) of this section for each subarea or district of the BSAI is apportioned to a CDQ reserve for each subarea or district.

(C) *Apportionment of groundfish CDQ reserve by TAC category.* (*1*) Except for the fixed gear sablefish CDQ reserves, the groundfish CDQ reserve is apportioned among TAC categories in amounts equal to 7.5 percent of each TAC category for which a reserve is established.

(*2*) If the final harvest specifications required by paragraph (c) of this section change the groundfish species comprising a species category or change a TAC by combining management areas or splitting a TAC into two or more TACs by management area, then any CDQ allocations based on those TACs change proportionally.

(iv) *Inshore/offshore reapportionment (Applicable through December 31, 1998).* Any amounts of the BSAI nonspecific reserve that are reapportioned to pollock as provided by this paragraph (b) must be apportioned between inshore and offshore components in the same proportion specified in paragraph (a)(6)(i) of this section.

(v) *Pacific cod.* Any amounts of the BSAI nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b)(1)(ii) of this section must be apportioned among vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(7)(i) of this section, unless the Regional Administrator determines under paragraph (a)(7)(ii) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

(2) *GOA.* Initial reserves are established for pollock, Pacific cod, flatfish, and ''other species,'' which are equal to 20 percent of the TACs for these species or species groups.

(i) *Pollock inshore-offshore reapportionment (applicable through December 31, 2001).* Any amounts of the GOA reserve that are reapportioned to pollock as provided by this paragraph (b) must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(ii) of this section.

(ii) *Pacific cod inshore-offshore reapportionment (applicable through December 31, 2001).* Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by this paragraph (b) must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(iii) of the section.

(3) *Apportionment of reserves.* (i) *Notification.* (A) As soon as practicable after April 1, June 1, and August 1, and on such other dates as NMFS determines appropriate, NMFS will, by notification in the FEDERAL REGISTER, apportion all or part of the BSAI or GOA reserve in accordance with this paragraph (b).

(B) No apportionment, retention, or PSC limit adjustment may take effect until notification has been published in the FEDERAL REGISTER with a statement of the findings upon which the apportionment, retention, or adjustment is based.

(ii) *Apportionment*—(A) *General.* Except as provided in paragraph (b)(3)(ii)(B) of this section, NMFS will apportion the amount of BSAI or GOA reserve that will be harvested by U.S. vessels during the remainder of the year.

(B) *Exception.* Part or all of the BSAI or GOA reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

(iii) *Public comment*—(A) *Prior comment.* NMFS will provide all interested persons an opportunity to comment on the proposed apportionments, retentions, or PSC limit adjustments under this paragraph (b) before such apportionments, retentions, or adjustments are made, unless NMFS finds that there is good cause for not providing a

prior comment opportunity, and publishes the reasons therefor in the notification of apportionment, retention, or adjustment.

(B) *Submittal dates.* Comments provided for in this paragraph (b)(3)(iii) must be received by NMFS not later than 5 days before April 1, June 1, and August 1, or other dates that may be specified.

(C) *Subsequent comment.* If NMFS determines for good cause that notification of apportionment, retention or PSC limit adjustment must be issued without providing interested persons a prior opportunity for public comment, comments on the apportionment, retention or adjustment will be received for a period of 15 days after its effective date.

(D) *Response to comments.* NMFS will consider all timely comments in deciding whether to make a proposed apportionment, retention, or PSC limit adjustment or to modify an apportionment, retention, or adjustment that previously has been made, and shall publish responses to those comments in the FEDERAL REGISTER as soon as practicable.

(E) *Data available.* The Regional Administrator will make available to the public during business hours the aggregate data upon which any preliminary TAC or PSC limit figure is based or the data upon which any apportionment or retention of surplus or reserve, or PSC limit adjustment was or is proposed to be based. These data will be available for a sufficient period to facilitate informed comment by interested persons.

(c) *Annual specifications*—(1) *Proposed specifications*—

(i) *General*—(A) *Notification.* As soon as practicable after consultation with the Council, NMFS will publish proposed specifications for the succeeding fishing year. The proposed specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year.

(B) *Public comment.* NMFS will accept public comment on the proposed specifications for 30 days from the date of publication in the FEDERAL REGISTER.

(ii) *GOA.* The GOA proposed specifications will specify annual TAC amounts for each target species and the ''other species'' category and apportionments thereof established under § 679.20(a)(2), halibut prohibited species catch amounts established under § 679.21, seasonal allowances of pollock, and inshore/offshore Pacific cod.

(iii) *BSAI.* The BSAI proposed specifications will specify the annual TAC and initial TAC amounts for each target species and the ''other species'' category and apportionments thereof established by paragraph (a)(2) of this section, PSQ reserves and prohibited species catch allowances established by § 679.21, seasonal allowances of pollock TAC (including pollock CDQ), and CDQ reserve amounts established by paragraph (b)(1)(iii) of this section.

(2) *Interim specifications.* Interim harvest specifications will be in effect on January 1 and will remain in effect until superseded by the filing of the final specifications by the Office of the Federal Register. Interim specifications will be established as follows:

(i) *GOA.* One-fourth of each proposed TAC and apportionment thereof (not including the reserves or the first seasonal allowance of pollock), one-fourth of the proposed halibut prohibited species catch amounts, and the proposed first seasonal allowance of pollock.

(ii) *BSAI.* Except for pollock and the hook and line and pot gear allocation of sablefish, one quarter of each proposed initial TAC and apportionment thereof, one quarter of each CDQ reserve established by paragraph (b)(1)(iii) of this section, and one quarter of the proposed PSQ reserve and prohibited species catch allowances established by § 679.21.

(A) The interim specifications for pollock and Atka mackerel will be equal to the first seasonal allowance for pollock and Atka mackerel that is published in the proposed specifications under paragraph (c)(1) of this section.

(B) The interim specifications for CDQ pollock will be equal to the first seasonal allowance that is published in the proposed specifications under paragraph (c)(1) of this section.

(3) *Final specifications*—(i) *Notification.* NMFS will consider comments on the

proposed specifications received during the comment period and, after consultation with the Council, will publish final specifications in the FEDERAL REGISTER. The final specifications will supersede the interim specifications.

(ii) *GOA.* The final specifications will specify the annual TAC for each target species and the ''other species'' category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock.

(iii) *BSAI.* The final specifications will specify the annual TAC for each target species and the ''other species'' category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of the pollock TAC (including pollock CDQ), and CDQ reserve amounts.

(4) *Inshore-offshore allocations*—(i) *BSAI pollock (applicable through December 31, 2004).* The proposed, interim, and final specifications will specify the allocation of pollock for processing by the inshore component in the BSAI and the offshore component in the BSAI, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

(ii) *GOA pollock and Pacific cod (applicable through December 31, 2001).* The proposed, interim, and final specifications will specify the allocation of GOA pollock and GOA Pacific cod for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

(5) *BSAI Pacific cod gear allocations* The proposed, interim, and final specifications will specify the allocation of BSAI Pacific cod among gear types as authorized under paragraph (a)(7) of this section.

(6) *BSAI Atka mackerel allocations.* The proposed, interim, and final specifications will specify the allocation of BSAI Atka mackerel among gear types as authorized under paragraph (a)(8) of this section.

(d) *Fishery closures*—(1) *Directed fishing allowance*—(i) *General.* If the Regional Administrator determines that any allocation or apportionment of a target species or ''other species'' category specified under paragraph (c) of this section has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group.

(ii) *Specified fishery amounts*—(A) *Inseason adjustments.* The category allocations or apportionments established under paragraph (c) of this section may be revised by inseason adjustments, as defined at § 679.25, for a given species or species group or pollock allowance, as identified by regulatory area, subarea, or district, and, if applicable, as further identified by gear type.

(B) *Incidental catch.* In establishing a directed fishing allowance, the Regional Administrator shall consider the amount of the allocation or apportionment established under paragraph (c) of this section that will be taken as incidental catch in directed fishing for other species in the same subarea, regulatory area, or district.

(iii) *Directed fishing closure*—(A) *Notification.* If the Regional Administrator establishes a directed fishing allowance for a fishery allocation or apportionment under this paragraph (d), and that allowance has been or will be reached before the end of the fishing season or year, NMFS will publish notification in the FEDERAL REGISTER prohibiting directed fishing in the specified subarea, regulatory area, or district.

(B) *Retention of bycatch species.* If directed fishing for a target species or the ''other species'' category is prohibited, a vessel may not retain that bycatch species in an amount that exceeds the maximum retainable bycatch amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

(2) *Groundfish as prohibited species closure.* When the Regional Administrator determines that the TAC of any target species or the ''other species'' category specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the FEDERAL REGISTER requiring that target species or the ''other species'' be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

(3) *Overfishing closure*—(i) *Notification.* If, in making a determination under paragraph (d)(2) of this section, the Regional Administrator also determines that fishing for other target species or species groups in the area, district or part thereof where the notification applies, may lead to the overfishing of the species or species group for which the allocation or apportionment has been or will be reached, NMFS will publish notification in the FEDERAL REGISTER specifying limitations or prohibitions designed to prevent overfishing of that species or species group.

(ii) *Limitations and prohibitions.* These limitations and prohibitions may prohibit directed fishing for other species or species groups in the area, district, or part thereof where the notification applies, or may limit time, area, or gear types that may be used in directed fishing for the other species or species groups.

(iii) *Factors to be considered.* When making the determinations specified under paragraphs (d)(1), (d)(2), and (d)(3) of this section, the Regional Administrator may consider allowing fishing to continue or resume with certain gear types or in certain areas and times based on findings of:

(A) The risk of biological harm to a groundfish species or species group for which the TAC or PSC limit is or will be reached.

(B) The risk of socioeconomic harm to authorized users of the groundfish for which the TAC or PSC limit will be or has been reached.

(C) The impact that the continued closure might have on the socioeconomic well-being of other domestic fisheries.

(e) *Maximum retainable bycatch amounts*—(1) *Proportion of basis species.* The maximum retainable bycatch amount for a bycatch species or species group is calculated as a proportion of the basis species retained on board the vessel using the retainable percentages in Table 10 to this part for the GOA species categories and in Table 11 to this part for the BSAI species categories.

(2) *Calculation.* (i) To calculate the maximum retainable bycatch amount for a specific bycatch species, an individual retainable bycatch amount must be calculated with respect to each basis species that is retained on board that vessel.

(ii) To obtain these individual retainable bycatch amounts, multiply the appropriate retainable percentage for the bycatch species/basis species combination, set forth in Table 10 to this part for the GOA species categories and Table 11 to this part for the BSAI species categories, by the amount of that basis species, in round-weight equivalents.

(iii) The maximum retainable bycatch amount for that specific bycatch species is the sum of the individual retainable bycatch amounts.

(f) *Directed fishing calculations and determinations*—(1) *Round-weight equivalents.* Any determination concerning directed fishing, the amount or percentage of any species, species group, or any fish or fish products must be calculated in round-weight equivalents.

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, retained CDQ species, or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species.

(g) *Allowable retention of pollock roe*—(1) *Percentage of pollock roe.* (i) Pollock roe retained on board a vessel at any time during a fishing trip must not exceed 7 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product on board the vessel during the same fishing trip.

(ii) Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip.

(iii) Pollock or pollock products from previous fishing trips that are retained on board a vessel may not be used to determine the allowable retention of pollock roe for that vessel.

(2) *Primary product.* (i) For purposes of this paragraph (g), only one primary pollock product per fish, other than roe, may be used to calculate the round-weight equivalent.

(ii) A primary pollock product that contains roe (such as headed and gutted pollock with roe) may not be used

to calculate the round-weight equivalent of pollock.

(iii) The primary pollock product must be distinguished from ancillary pollock products in the DCPL required under § 679.5(a)(9).

(3) *Pollock product recovery rates (PRRs).* Use the product types and standard PRRs for pollock found in Table 3 to this part to calculate round-weight equivalents for pollock for purposes of this paragraph (g).

(4) *Calculation of retainable pollock roe*—(i) *Round-weight equivalent.* (A) To calculate the amount of pollock roe that can be retained on board during a fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product on board by the appropriate PRR.

(B) To determine the maximum mount of pollock roe that can be retained on board a vessel during the same fishing trip, multiply the round-weight equivalent by 0.07.

(C) Pollock roe retained on board from previous fishing trips will not be counted.

(ii) *Two or more products from different fish.* (A) If two or more products, other than roe, are made from different fish, round-weight equivalents are calculated separately for each product.

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during a fishing trip, add the round-weight equivalents together; then, multiply the sum by 0.07.

(iii) *Two or more products from same fish.* If two or more products, other than roe, are made from the same fish, the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.

(5) *Primary pollock product*—(i) *Process prior to transfer.* Any primary pollock product used to calculate retainable amounts of pollock roe must be frozen, canned, or reduced to meal by the vessel retaining the pollock roe prior to any transfer of the product to another vessel.

(ii) *No discard of processed product.* Any pollock product that has been processed may not be discarded at sea unless such discarding is necessary to meet other requirements of this part.

(h) *Standard product types and standard PRRs*—(1) *Calculating round-weight equivalents from standard PRRs.* Round-weight equivalents for groundfish products are calculated using the product codes and standard PRRs specified in Table 3 to this part.

(2) *Adjustments.* The Regional Administrator may adjust standard PRRs and product types specified in Table 3 to this part if he or she determines that existing standard PRRs are inaccurate or if new product types are developed.

(i) Adjustments to any standard PRR listed in Table 3 to this part that are within and including 15 percent of that standard PRR may be made without providing notification and opportunity for prior public comment.

(ii) Adjustments of any standard PRR during a calendar year, when aggregated with all other adjustments made during that year, will not exceed 15 percent of the standard PRR listed in Table 3 to this part at the beginning of that calendar year.

(iii) No new product type will be announced until NMFS publishes the proposed adjustment and/or new product type in the FEDERAL REGISTER and provides the public with at least 30 days opportunity for public comment.

(iv) Any adjustment of a PRR that acts to further restrict the fishery will not be effective until 30 days after the date of publication in the FEDERAL REGISTER.

(v) If NMFS makes any adjustment or announcement without providing a prior notification and opportunity for prior public comment, the Regional Administrator will receive public comments on the adjustment or announcement for a period of 15 days from the date of publication in the FEDERAL REGISTER.

(i) *Forage fish*—(1) *Definition.* See § 679.2.

(2) *Applicability.* The provisions of § 679.20(i) apply to all vessels fishing for groundfish in the BSAI or GOA, and to all vessels processing groundfish harvested in the BSAI or GOA.

(3) *Closure to directed fishing.* Directed fishing for forage fish is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing.* The sale, barter, trade, or processing of forage fish is prohibited,

except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production.* Retained catch of forage fish not exceeding the maximum retainable bycatch amount may be processed into fishmeal for sale, barter, or trade.

[61 FR 31230, June 19, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 679.20, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE 1: At 65 FR 3898, Jan. 25, 2000, § 679.20 was amended by suspending paragraphs (a)(5)(i)(A) and (a)(5)(ii)(B), and adding paragraphs (a)(5)(i)(C) and (a)(5)(ii)(C), effective Jan. 20, 2000, through July 19, 2000. At 65 FR 31107, May 16, 2000, paragraph (a)(5)(i)(B) was removed and paragraph (a)(5)(i)(C) was redesignated as paragraph (a)(5)(i)(B). At 65 FR 36795, June 12, 2000, the effective date was extended to Dec. 31, 2000. For the convenience of the user, the added text follows:

§ 679.20 General limitations.

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(ii) * * *

(B) *GOA seasonal allowances (applicable through July 19, 2000).* Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(d)(3) as follows: A Season, 30 percent; B Season, 15 percent; C Season, 30 percent; D Season, 25 percent. Within any fishing year, underharvest or overharvest of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment.

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EFFECTIVE DATE NOTE 2: At 65 FR 4540, Jan. 28, 2000, § 679.20 was amended by adding paragraphs (a)(5)(i)(D) and (d)(1)(iv), effective Jan. 21, 2000 through July 20, 2000. At 65 FR 39107, 39110, June 23, 2000, the effective date was extended from July 20, 2000, through Jan. 16, 2001, and paragraphs (a)(5)(i)(D) and (d)(1)(iv) were amended by removing ''applicable through July 20, 2000'', and adding ''applicable through January 16, 2001'', and paragraph (a)(5)(i)(D) was redesignated as paragraph (a)(5)(i)(C), effective July 20, 2000, through January 16, 2001. For the convenience of the user, the added text follows:

§ 679.20 General limitations.

(a) * * *

(5) * * *

(i) * * *

(C) *AFA sectoral allocations* (applicable through January 16, 2001). The pollock TAC apportioned to each BSAI subarea or district, after subtraction of the 10 percent CDQ reserve under § 679.31 (a), will be allocated as follows:

(*1*) *Incidental catch allowance.* The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year, the Regional Administrator determines that the incidental catch allowance has been set too high or too low, he/she may issue inseason notification in the FEDERAL REGISTER that reallocates pollock to/from the directed pollock fisheries to/from the incidental catch allowance according to the proportions established under § 679.20(a)(5)(i)(D)(*2*).

(*2*) *Directed fishing allocations.* The remaining pollock TAC apportioned to each BSAI subarea or district will be allocated for directed fishing as follows:

(*i*) 50 percent to vessels harvesting pollock for processing by AFA inshore processors,

(*ii*) 40 percent to vessels harvesting pollock for processing by catcher/processors, with not less than 8.5 percent of this allocation made available for harvest by AFA catcher vessels and not more than 0.5 percent of this allocation made available for harvest by restricted AFA catcher/processors, and

(*iii*) 10 percent to vessels harvesting pollock for processing by AFA motherships.

(*3*) *Allocations for fishing by inshore cooperatives and vessels not participating in cooperatives.* The TAC allocated to vessels harvesting pollock for processing by AFA inshore processors will be divided into separate allocations for cooperatives and vessels not participating in cooperatives. The TAC allocation for cooperative fishing will be

equal to the aggregate annual allocations of all inshore cooperatives that receive pollock allocations under § 679.61(e). The TAC allocation for fishing for vessels not participating in cooperatives will be equal to the allocation made to vessels harvesting pollock for processing by AFA inshore processors minus the TAC allocation for cooperative fishing.

(*4*) *Excessive harvesting share.* NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the sum of the allocations made under § 679.20(a)(5)(i)(D)(*2*). The excessive share limit will be published in the proposed, interim, and final specifications.

* * * * *

(d) * * *

(1) * * *

(iv) *AFA sideboard limitations* (applicable through January 16, 2001)—(A) If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels established under § 679.63 has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator shall consider the amount of the harvest limitation established for a group of AFA vessels under § 679.63 that will be taken as incidental catch by those vessels in directed fishing for other species.

* * * * *

§ 679.21 Prohibited species bycatch management.

(a) *Applicability.* (1) This section applies to all vessels required to have a Federal fisheries permit under § 679.4.

(2) Except as otherwise provided, this section also applies to all motherships and shoreside processors that receive groundfish from vessels required to have a Federal fisheries permit under § 679.4.

(b) *General*—(1) *Definition.* Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Oncorhynchus mykiss*), halibut, Pacific herring (*Clupea harengus pallasi*), king crab, and Tanner crab caught by a vessel regulated under this part while fishing for groundfish in the BSAI or GOA, unless retention is authorized by other applicable laws, including the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of this title.

(2) *Prohibited species catch restrictions.* The operator of each vessel engaged in directed fishing for groundfish in the GOA or BSAI must:

(i) Minimize its catch of prohibited species.

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except as provided below, return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition. The following exceptions are made:

(A) Salmon prohibited species catch in the BSAI groundfish fisheries under paragraph (c) of this section and § 679.26; and

(B) Salmon PSQ caught by catcher vessels using trawl gear in the CDQ fisheries under subpart C of this part.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section, § 679.26, or for salmon PSQ retained by catcher vessels using trawl gear in the CDQ fisheries, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

(4) *Prohibited species taken seaward of the EEZ off Alaska.* No vessel fishing for groundfish in the GOA or BSAI may have on board any species listed in this paragraph (b) that was taken in waters seaward of these management areas, regardless of whether retention of such species was authorized by other applicable laws.

(5) *Sablefish as a prohibited species.* (See § 679.24(c)(2)(ii).)

(c) *Salmon taken in BSAI trawl fishery*—(1) *Salmon discard.* Except as provided in paragraph (c)(3) of this section, the operator of a vessel and the manager of a shoreside processor must not discard any salmon or transfer or

process any salmon under the PSD Program at §679.26, if the salmon were taken incidental to a directed fishery for BSAI groundfish by vessels using trawl gear until the number of salmon has been determined by an observer and the collection of any scientific data or biological samples from the salmon has been completed.

(2) *Salmon retention and storage.* (i) Operators of vessels carrying observers aboard and whose fishing operations allow for sorting of BSAI groundfish catch for salmon must retain all salmon bycatch from each haul in a separate bin or other location that allows an observer free and unobstructed physical access to the salmon to count each fish and collect any scientific data or biological samples. Salmon from different hauls must be retained separately in a manner that identifies the haul from which the salmon were taken.

(ii) Operators of vessels not carrying observers aboard or whose fishing operations do not allow for sorting of BSAI groundfish catch for salmon must ice, freeze, or store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations for delivery to the processor receiving the vessel's BSAI groundfish catch.

(iii) Processors receiving BSAI groundfish harvested in a directed fishery for groundfish using trawl gear must retain all salmon delivered by each trawl vessel during a weekly reporting period in separate bins marked with the vessel's name and ADF&G fish ticket number(s) for each delivery until an observer has counted each salmon and collected any scientific data or biological samples from the salmon delivered to the processor by that vessel. Processors without an observer present must store whole salmon in an iced or frozen state until an observer is available to count each fish. Salmon must be stored at a location that allows an observer free and unobstructed physical access to each salmon.

(3) *Exemption.* Motherships and shoreside processors that are not required to obtain observer coverage during a month under §679.50(c) and (d) are not required to retain salmon.

(4) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors that are required to retain salmon under paragraph (c)(1) of this section must designate and identify to the observer aboard the vessel or at the shoreside processor a crew person or employee to be responsible for sorting, retention, and storage of salmon. Upon request of the observer, the designated crew person or employee also is responsible for counting salmon and taking biological samples from retained salmon under the direction of the observer.

(5) *Release of salmon.* Salmon must be returned to Federal waters as soon as is practicable, with a minimum of injury, regardless of condition, following notification by an observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed.

(d) *GOA halibut PSC limits.* This section is applicable for vessels engaged in directed fishing for groundfish in the GOA.

(1) *Notification*—(i) *Proposed and final limits and apportionments.* NMFS will publish annually in the FEDERAL REGISTER proposed and final halibut PSC limits and apportionments thereof in the notification required under §679.20.

(ii) *Modification of limits.* NMFS, by notification in the FEDERAL REGISTER, may change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in this paragraph (d)(1).

(2) *Public comment.* NMFS will accept public comment on the proposed halibut PSC limits, and apportionments thereof, for a period of 30 days from the date of publication in the FEDERAL REGISTER. NMFS will consider comments received on proposed halibut limits and, after consultation with the Council, will publish notification in the FEDERAL REGISTER specifying the final halibut PSC limits and apportionments thereof.

(3) *Trawl gear proposed halibut limit*—(i) *Notification.* After consultation with the Council, NMFS will publish notification in the FEDERAL REGISTER specifying the proposed halibut PSC limit for vessels using trawl gear.

(ii) *Bycatch allowance.* The halibut PSC limit specified for vessels using trawl gear may be further apportioned as bycatch allowances to the fishery categories listed in paragraph (d)(3)(iii) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (d).

(iii) *Trawl fishery categories.* For purposes of apportioning the trawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round–weight equivalents of these GOA groundfish species for which a TAC has been specified under § 679.20:

(A) *Shallow–water species fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate catch of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species'' that is greater than the retained aggregate amount of other GOA groundfish species or species group.

(B) *Deep–water species fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained catch of groundfish and is not a shallow-water species fishery as defined under paragraph (d)(3)(iii)(A) of this section.

(4) *Hook-and-line and pot gear fisheries*—(i) *Notification.* After consultation with the Council, NMFS will publish notification in the FEDERAL REGISTER specifying the proposed and final halibut PSC limits for vessels using hook-and-line gear. The notification also may specify a halibut PSC limit for the pot gear fisheries.

(ii) *Halibut bycatch allowance.* The halibut PSC limit specified for vessels using hook-and-line gear may be further apportioned, as bycatch allowances, to the fishery categories listed in paragraph (d)(4)(iii) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (d).

(iii) *Hook-and-line fishery categories.* For purposes of apportioning the hook-and-line halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those GOA groundfish species for which a TAC has been specified under § 679.20.

(A) *Demersal shelf rockfish in the Southeast Outside District.* Fishing with hook-and-line gear in the Southeast Outside District of the GOA Eastern Regulatory Area (SEEO) during any weekly reporting period that results in a retained catch of demersal shelf rockfish that is greater than the retained amount of any other fishery category defined under this paragraph (d)(4)(iii).

(B) *Sablefish fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (d)(4)(iii).

(C) *Other hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery or a sablefish fishery defined under paragraphs (d)(4)(iii)(A) and (B) of this section.

(5) *Seasonal apportionments*—(i) *General.* NMFS, after consultation with the Council, may apportion each halibut PSC limit or bycatch allowance specified under this paragraph (d) on a seasonal basis.

(ii) *Factors to be considered.* NMFS will base any seasonal apportionment of a halibut PSC limit or bycatch allowance on the following types of information:

(A) Seasonal distribution of halibut.

(B) Seasonal distribution of target groundfish species relative to halibut distribution.

(C) Expected halibut bycatch needs, on a seasonal basis, relative to changes in halibut biomass and expected catches of target groundfish species.

(D) Expected variations in bycatch rates throughout the fishing year.

(E) Expected changes in directed groundfish fishing seasons.

(F) Expected start of fishing effort.

(G) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

(iii) *Unused seasonal apportionments.* Unused seasonal apportionments of halibut PSC limits specified for trawl, hook-and-line, or pot gear will be added to the respective seasonal apportionment for the next season during a current fishing year.

(iv) *Seasonal apportionment exceeded.* If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

(6) *Apportionment among regulatory areas and districts.* Each halibut PSC limit specified under this paragraph (d) also may be apportioned among the GOA regulatory areas and districts.

(7) *Halibut PSC closures*—(i) *Trawl gear fisheries.* If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in either of the trawl fishery categories listed in paragraph (d)(3)(iii) (A) or (B) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the FEDERAL REGISTER closing the entire GOA or the applicable regulatory area or district to directed fishing with trawl gear for each species and/or species group that comprises that fishing category; provided, however, that when the halibut bycatch allowance, or seasonal apportionment thereof, specified for the shallow-water species fishery is reached, fishing for pollock by vessels using pelagic trawl gear may continue, consistent with other provisions of this part.

(ii) *Hook-and-line fisheries.* If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the three hook-and-line gear fishery categories listed under paragraph (d)(4)(iii) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the FEDERAL REGISTER closing the entire GOA or the applicable regulatory area or district to directed fishing with hook-and-line gear for each species and/or species group that comprises that fishing category.

(iii) *Pot gear fisheries.* If, during the fishing year, the Regional Administrator determines that the catch of halibut by operators of vessels using pot gear to participate in a directed fishery for groundfish will reach the halibut PSC limit, or seasonal apportionment thereof, NMFS will publish notification in the FEDERAL REGISTER prohibiting directed fishing for groundfish by vessels using pot gear for the remainder of the season to which the halibut PSC limit or seasonal apportionment applies.

(iv) *Nonpelagic trawl gear fisheries*—(A) *Continued fishing under specified conditions.* When the vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Administrator may, by notification in the FEDERAL REGISTER, allow some or all of those vessels to continue to fish for groundfish using nonpelagic trawl gear under specified conditions, subject to the other provisions of this part.

(B) *Factors to be considered.* In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Administrator will take into account the following considerations, and issue relevant findings:

(*1*) The risk of biological harm to halibut stocks and of socio-economic harm to authorized halibut users posed by continued bottom trawling by these vessels.

(*2*) The extent to which these vessels have avoided incidental halibut catches up to that point in the year.

(*3*) The confidence of the Regional Administrator in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year.

(*4*) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions

and to alert the Regional Administrator to increases in their incidental halibut catches.

(*5*) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Administrator that adherence to the prescribed conditions can be assured in light of available enforcement resources.

(e) *BSAI PSC limits*—(1) *Trawl gear*—(i) *PSQ reserve.* 7.5 percent of each PSC limit set forth in paragraphs (e)(1) (ii) through (v), (e)(1)(vii), and (e)(1)(viii) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

(ii) *Red king crab in Zone 1.* The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified annually by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(iii) (A) through (C) of this section.

(A) When the number of mature female red king crabs is at or below the threshold of 8.4 million mature crabs or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 32,000 red king crabs.

(B) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is greater than 14.5 million lb but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 97,000 red king crabs.

(C) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is equal to or greater than 55 million lb, the Zone 1 PSC limit will be 197,000 red king crabs.

(iii) *Tanner crab (C. bairdi).* The PSC limit of *C. bairdi* crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(iii) (A) and (B) of this section.

(A) *Zone 1.* When the total abundance of *C. bairdi* crabs is:

(*1*) 150 million animals or less, the PSC limit will be 0.5 percent of the total abundance, minus 20,000 animals.

(*2*) Over 150 million to 270 million animals, the PSC limit will be 730,000 animals.

(*3*) Over 270 million to 400 million animals, the PSC limit will be 830,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 980,000 animals.

(B) *Zone 2.* When the total abundance of *C. bairdi* crabs is:

(*1*) 175 million animals or less, the PSC limit will be 1.2 percent of the total abundance, minus 30,000 animals.

(*2*) Over 175 million to 290 million animals, the PSC limit will be 2,070,000 animals.

(*3*) Over 290 million to 400 million animals, the PSC limit will be 2,520,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 2,970,000 animals.

(iv) *C. opilio.* The PSC limit of *C. opilio* caught by trawl vessels while engaged in directed fishing for groundfish in the COBLZ will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. opilio* as indicated by the NMFS annual bottom trawl survey using the following criteria:

(A) *PSC Limit.* The PSC limit will be 0.1133 percent of the total abundance, minus 150,000 *C. opilio* crabs, unless;

(B) *Minimum PSC Limit.* If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.350 million animals; or

(C) *Maximum PSC Limit.* If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 12.850 million animals.

(v) *Halibut.* The PSC limit of halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 3,675 mt of halibut mortality.

(vi) *Pacific herring.* The PSC limit of Pacific herring caught while conducting any domestic trawl fishery for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. The PSC limit will be apportioned into annual herring PSC allowances, by target fishery, and will be published along with the annual herring PSC limit in the FEDERAL REGISTER with the proposed and final groundfish specifications defined in § 679.20.

(vii) *Chinook salmon.* The PSC limit of chinook salmon caught while conducting any trawl fishery for groundfish in the BSAI between January 1 and April 15 is 48,000 fish.

(viii) *Non-chinook salmon.* The PSC limit of non-chinook salmon caught by vessels using trawl gear during August 15 through October 14 in the CVOA is 42,000 fish.

(2) *Nontrawl gear, halibut.* (i) The PSC limit of halibut caught while conducting any nontrawl fishery for groundfish in the BSAI during any fishing year is the amount of halibut equivalent to 900 mt of halibut mortality.

(ii) The amount of 7.5 percent of the non-trawl gear halibut PSC limit set forth in paragraph (e)(2)(i) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

(3) *PSC apportionment to trawl fisheries*—(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserve, will apportion each PSC limit set forth in paragraphs (e)(1) (ii) through (viii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

(ii) *Red king crab, C. bairdi Tanner crab, and halibut*—(A) *General.* For vessels engaged in directed fishing for groundfish in the GOA or BSAI, the PSC limits for red king crab, *C. bairdi, C. opilio,* and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv) (B) through (F) of this section.

(B) *Red King Crab Savings Subarea* (RKCSS). (*1*) The RKCSS is the portion of the RKCSA between 56°00′ and 56°10′ N. lat. Notwithstanding other provisions of this part, vessels using non-pelagic trawl gear in the RKCSS may engage in directed fishing for groundfish in a given year, if the ADF&G had established a guideline harvest level the previous year for the red king crab fishery in the Bristol Bay area.

(*2*) When the RKCSS is open to vessels fishing for groundfish with non-pelagic trawl gear under (e)(3)(ii)(B)(*1*) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph (e)(1)(ii) of this section for the RKCSS. The amount of the red king crab bycatch limit specified for the RKCSS will not exceed an amount equivalent to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category under this paragraph (e)(3) and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

(C) *Incidental catch in midwater pollock fishery.* Any amount of red king crab, *C. bairdi, C. opilio,* or halibut that is incidentally taken in the midwater pollock fishery as defined in paragraph (e)(3)(iv)(A) of this section will be counted against the bycatch allowances specified for the pollock/Atka mackerel/''other species'' category defined in paragraph (e)(3)(iv)(F) of this section.

(iii) *Pacific herring.* The PSC limit for Pacific herring will be apportioned to the BSAI trawl fishery categories defined in paragraphs (e)(3)(iv) (A) through (F) of this section.

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

(A) *Midwater pollock fishery.* Fishing with trawl gear during any weekly reporting period that results in a catch

of pollock that is 95 percent or more of the total amount of groundfish caught during the week.

(B) *Flatfish fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rock sole, ''other flatfish,'' and yellowfin sole that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(*1*) *Yellowfin sole fishery*. Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under this paragraph (e)(3)(iv)(B) and results in a retained amount of yellowfin sole that is 70 percent or more of the retained aggregate amount of rock sole, ''other flatfish,'' and yellowfin sole.

(*2*) *Rock sole/flathead sole/''other flatfish'' fishery*. Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under this paragraph (e)(3)(iv)(B) and is not a yellowfin sole fishery as defined under paragraph (e)(3)(iv)(B)(*1*) of this section.

(C) *Greenland turbot/arrowtooth flounder/sablefish fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, and sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(D) *Rockfish fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rockfish species that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(E) Pacific cod fishery. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (e)(3)(iv).

(F) *Pollock/Atka mackerel/''other species.''* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of pollock other than pollock harvested in the midwater pollock fishery defined under paragraph (e)(3)(iv)(A) of this section, Atka mackerel, and ''other species'' that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(4) *Halibut apportionment to nontrawl fishery categories*—(i) *General*. NMFS, after consultation with the Council and after subtraction of PSQ reserve, may apportion the halibut PSC limit for nontrawl gear set forth under paragraph (e)(2)(i) of this section into bycatch allowances for nontrawl fishery categories defined under paragraph (e)(4)(ii) of this section based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the nontrawl halibut PSC limit. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

(ii) *Nontrawl fishery categories*. For purposes of apportioning the nontrawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those BSAI groundfish species for which a TAC has been specified under § 679.20.

(A) *Pacific cod hook-and-line fishery*. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of Pacific cod that is greater than the retained amount of any other groundfish species.

(B) *Sablefish hook-and-line fishery*. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other groundfish species.

(C) *Groundfish jig gear fishery*. Fishing with jig gear during any weekly reporting period that results in a retained catch of groundfish.

(D) *Groundfish pot gear fishery*. Fishing with pot gear under restrictions set forth in § 679.24(b) during any weekly reporting period that results in a retained catch of groundfish.

(E) *Other nontrawl fisheries*. Fishing for groundfish with nontrawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line fishery, a sablefish

hook-and-line fishery, a jig gear fishery, or a groundfish pot gear fishery as defined under paragraph (e)(4)(ii) of this section.

(5) *Seasonal apportionments of bycatch allowances*—(i) *General.* NMFS, after consultation with the Council, may apportion fishery bycatch allowances on a seasonal basis.

(ii) *Factors to be considered.* NMFS will base any seasonal apportionment of a bycatch allowance on the following types of information:

(A) Seasonal distribution of prohibited species;

(B) Seasonal distribution of target groundfish species relative to prohibited species distribution;

(C) Expected prohibited species bycatch needs on a seasonal basis relevant to change in prohibited species biomass and expected catches of target groundfish species;

(D) Expected variations in bycatch rates throughout the fishing year;

(E) Expected changes in directed groundfish fishing seasons;

(F) Expected start of fishing effort; or

(G) Economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry.

(iii) *Seasonal trawl fishery bycatch allowances*—(A) *Unused seasonal apportionments.* Unused seasonal apportionments of trawl fishery bycatch allowances made under this paragraph (e)(5) will be added to its respective fishery bycatch allowance for the next season during a current fishing year.

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a trawl fishery bycatch allowance made under paragraph (d)(5) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year.

(iv) *Seasonal nontrawl fishery bycatch allowances*—(A) *Unused seasonal apportionments.* Any unused portion of a seasonal nontrawl fishery bycatch allowance made under this paragraph (e)(5) will be reapportioned to the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (e)(5)(ii) of this section.

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a nontrawl fishery bycatch allowance made under this paragraph (e)(5) is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (e)(5)(ii) of this section.

(6) *Notification*—(i) *General.* NMFS will publish annually in the FEDERAL REGISTER the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final PSQ reserve amounts, the proposed and final bycatch allowances, the seasonal apportionments thereof and the manner in which seasonal apportionments of non-trawl fishery bycatch allowances will be managed as required by paragraph (e) of this section.

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days from the date of publication in the FEDERAL REGISTER.

(7) *Trawl PSC closures*—(i) *Exception.* When a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/''other species'' fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(ii) *Red king crab or C. bairdi Tanner crab, Zone 1, closure*—(A) *General.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing

year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of Zone 1, including the RKCSS, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) *RKCSS.* If, during the fishing year the Regional Administrator determines that the amount of the red king crab PSC limit that is specified for the RKCSS under § 679.21(e)(3)(ii)(B) of this section will be caught, NMFS will publish in the FEDERAL REGISTER the closure of the RKCSS to directed fishing for groundfish with nonpelagic trawl gear for the remainder of the year.

(iii) *C. bairdi Tanner crab, Zone 2, closure.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv) (B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of Zone 2 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(iv) *COBLZ.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the COBLZ bycatch allowance, or seasonal apportionment thereof, of *C. opilio* specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of the COBLZ, as defined in Figure 13 to this part, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(v) *Halibut closure.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section in the BSAI will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of the entire BSAI to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(vi) *Pacific herring*—(A) *Closure.* Except as provided in paragraph (e)(7)(vi)(B) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(A) through (F) of this section in the BSAI will catch the herring bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of the Herring Savings Area as defined in Figure 4 to this part to directed fishing for each species and/or species group in that fishery category.

(B) *Exceptions—(1) Midwater pollock.* When the midwater pollock fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock with trawl gear.

(2) Pollock/Atka mackerel/ ''other species''. When the pollock/Atka mackerel/ ''other species'' fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock by trawl vessels using nonpelagic trawl gear.

(vii) *Chum salmon*. If the Regional Administrator determines that 42,000 non-chinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA, defined under § 679.22(a)(5) and in Figure 2 to this part, NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9, to this part.

(viii) *Chinook salmon*. When the Regional Administrator determines that 48,000 chinook salmon have been caught by vessels using trawl gear in the BSAI during the time period from January 1 through April 15, NMFS will prohibit fishing with trawl gear for the remainder of that period within the Chinook Salmon Savings Area as defined in Figure 8 to this part.

(8) *Nontrawl halibut closures*. If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the nontrawl fishery categories listed under paragraph (e)(4) of this section will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (e)(4)(ii) of this section, NMFS will publish in the FEDERAL REGISTER the closure of the entire BSAI to directed fishing with the relevant gear type for each species and/or species group in that fishery category.

(f) *Program to reduce prohibited species bycatch rates*—(1) *Requirements*—(i) *General*. A vessel's bycatch rate, as calculated at the end of a fishing month under paragraph (f)(8)(ii) of this section, while participating in the fisheries identified in paragraph (f)(2) of this section, shall not exceed bycatch rate standards referenced in paragraph (f)(3) of this section.

(ii) *Applicability*. A vessel is subject to this paragraph (f) if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership that receives unsorted codends from the vessel, at any time during a weekly reporting period, and the vessel is assigned to one of the fisheries defined under paragraph (f)(2) of this section.

(2) *Assigned fisheries*. During any weekly reporting period, a vessel's observed catch composition of groundfish species for which a TAC has been specified in the GOA or BSAI will determine the fishery to which the vessel is assigned, as follows:

(i) *GOA midwater pollock fishery* means fishing with trawl gear in the GOA that results in an observed catch of groundfish from the GOA during any weekly reporting period that is composed of 95 percent or more of pollock when the directed fishery for pollock by vessels using trawl gear other than pelagic trawl gear is closed.

(ii) *GOA other trawl fishery* means fishing with trawl gear in the GOA that results in an observed catch of groundfish from the GOA during any weekly reporting period that does not qualify as a midwater pollock fishery under paragraph (f)(2)(i) of this section.

(iii) *BSAI midwater pollock fishery* means fishing with trawl gear in the BSAI that results in an observed catch of groundfish from the BSAI during any weekly reporting period that is composed of 95 percent or more of pollock when the directed fishery for pollock by vessels using trawl gear other than pelagic trawl gear is closed.

(iv) *BSAI yellowfin sole fishery* means fishing with trawl gear in the BSAI that results in a retained aggregate amount of rock sole, ''other flatfish,'' and yellowfin sole caught in the BSAI during any weekly reporting period that is greater than the retained amount of any other fishery under this paragraph (f)(2) and results in a retained amount of BSAI yellowfin sole that is 70 percent or more of the retained aggregate amount of BSAI rock sole, ''other flatfish,'' and yellowfin sole.

(v) *BSAI bottom pollock fishery* means fishing with trawl gear in the BSAI that results in a retained amount of pollock caught in the BSAI during any weekly reporting period other than pollock harvested in the midwater pollock fishery in the BSAI defined in paragraph (f)(2)(iii) of this section, that is greater than the retained amount of any other fishery defined under this paragraph (f)(2).

(vi) *BSAI other trawl fishery* means fishing with trawl gear in the BSAI that results in a retained amount of groundfish caught in the BSAI during any weekly reporting period that does

not qualify as a midwater pollock, yellowfin sole, or bottom pollock fishery.

(3) *Notification of bycatch rate standards*—(i) *Prior notice.* Prior to January 1 and July 1 of each year, the Regional Administrator will publish notification in the FEDERAL REGISTER specifying bycatch rate standards for the fisheries identified in this paragraph (f) that will be in effect for specified seasons within the 6-month periods of January 1 through June 30 and July 1 through December 31, respectively.

(ii) *Adjustments.* The Regional Administrator may adjust bycatch rate standards as frequently as he or she considers appropriate.

(4) *Factors upon which bycatch rate standards are based.* Bycatch rate standards for a fishery and adjustments to such standards will be based on the following information and considerations:

(i) Previous years' average observed bycatch rates for that fishery.

(ii) Immediately preceding season's average observed bycatch rates for that fishery.

(iii) The bycatch allowances and associated fishery closures specified under paragraphs (d) and (e) of this section.

(iv) Anticipated groundfish harvests for that fishery.

(v) Anticipated seasonal distribution of fishing effort for groundfish.

(vi) Other information and criteria deemed relevant by the Regional Administrator.

(5) *Public comment*—(i) *Prior comment.* Bycatch rate standards or adjustments to such standards specified under this section will not take effect until NMFS has published the proposed bycatch rate standards or adjustments to such standards in the FEDERAL REGISTER for public comment for a period of 30 days, unless NMFS finds for good cause that such notification and public comment are impracticable, unnecessary, or contrary to the public interest.

(ii) *Comment after notification.* If NMFS decides, for good cause, that bycatch rate standards or adjustments to such standards are to be made effective without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, bycatch rate standards or adjustments to such standards will be received by the Regional Administrator for a period of 15 days after the effective date of notification.

(iii) *Public inspection of data.* During any such 15-day period, the Regional Administrator will make available for public inspection, during business hours, the aggregate data upon which bycatch rate standards or adjustments to such standards were based.

(iv) *Written comments.* If written comments are received during any such 15-day period that oppose or protest bycatch rate standards or adjustments to such standards issued under this section, NMFS will reconsider the necessity for the bycatch standards or adjustment to such standards and, as soon as practicable after that reconsideration, will either—

(A) Publish in the FEDERAL REGISTER notification of continued effectiveness of bycatch rate standards or adjustment to such standards, responding to comments received; or

(B) Modify or rescind bycatch rate standards or adjustment to such standards.

(6) *Notification of adjustment to bycatch rate standards.* Notification of adjustments to bycatch rate standards issued by NMFS under paragraph (f)(3) of this section will include the following information:

(i) A description of the adjustment to one or more bycatch rate standards specified for a fishery.

(ii) The reasons for the adjustment and the determinations required under paragraph (f)(4) of this section.

(iii) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will remain in effect until revised by subsequent notification in the FEDERAL REGISTER.

(7) *Vessel bycatch rates*—(i) *Observed data.* For purposes of this section, observed data collected for each haul sampled during a day will include: Date; Federal reporting area where trawl gear for the haul was retrieved; total round weight of groundfish, in metric tons in the portion of the haul sampled by groundfish species or species group for which a TAC has been specified under § 679.20; and total round weight of halibut, in kilograms, in the portion of the haul sampled. Observer

data from the BSAI trawl fisheries also will include the total number of red king crab in the portion of the haul sampled.

(ii) *Observer sampling procedures.* (A) NMFS will randomly predetermine the hauls to be sampled by an observer during the time the observer is on a vessel.

(B) An observer will take samples at random from throughout the haul, and take samples prior to sorting of the haul by the crew for processing or discarding of the catch.

(C) An observer will sample a minimum of 100 kg of fish from each haul sampled.

(D) While an observer is at sea, the observer will report to NMFS, on at least a weekly basis, the data for sampled hauls.

(E) Upon request, the observer will allow the vessel operator to see all observed data set forth under paragraph (f)(7)(i) of this section that the observer submits to NMFS.

(8) *Determination of individual vessel bycatch rates.* For each vessel, the Regional Administrator will aggregate from sampled hauls the observed data collected during a weekly reporting period on the total round weight, in metric tons, of each groundfish species or species group for which a TAC has been specified under § 679.20 to determine to which of the fisheries described in paragraph (f)(8)(i) of this section the vessel should be assigned for that week.

(i) *Vessel assignment to fisheries*—(A) *BSAI catcher/processors.* Catcher/processors will be assigned to fisheries at the end of each weekly reporting period based on the round-weight equivalent of the retained groundfish catch composition reported on a vessel's WPR that is submitted to the Regional Administrator under § 679.5.

(B) *BSAI catcher vessel delivery in Federal waters.* Catcher vessels that deliver to motherships in Federal waters during a weekly reporting period will be assigned to fisheries based on the round-weight equivalent of the retained groundfish catch composition reported on the WPR submitted to the Regional Administrator for that week by the mothership under § 679.5.

(C) *BSAI catcher vessel delivery in Alaska State waters.* Catcher vessels delivering groundfish to shoreside processors or to motherships in Alaska State waters during a weekly reporting period will be assigned to fisheries based on the round-weight equivalent of the groundfish retained by the processor and reported on an ADF&G fish ticket as required under Alaska State regulations at A.S. 16.05.690.

(ii) *Calculation of monthly bycatch rates*—(A) *Assigned fishery.* At the end of each fishing month during which an observer sampled at least 50 percent of a vessel's total number of trawl hauls retrieved while an observer was aboard (as recorded in the vessel's DFL), the Regional Administrator will calculate the vessel's bycatch rate based on observed data for each fishery to which the vessel was assigned for any weekly reporting period during that fishing month.

(B) *Verified observer data.* Only observed data that have been checked, verified, and analyzed by NMFS will be used to calculate vessel bycatch rates for purposes of this section.

(C) *Calculation.* The bycatch rate of a vessel for a fishery defined under paragraph (f)(2) of this section during a fishing month is a ratio of halibut to groundfish that is calculated by using the total round weight of halibut (in kilograms), or total number of red king crab, in samples during all weekly reporting periods in which the vessel was assigned to that fishery and the total round weight of the groundfish (in metric tons) for which a TAC has been specified under § 679.20 in samples taken during all such periods.

(9) *Compliance with bycatch rate standards.* A vessel has exceeded a bycatch rate standard for a fishery if the vessel's bycatch rate for a fishing month, as calculated under paragraph (f)(8)(ii) of this section exceeds the bycatch rate standard established for that fishery under paragraph (f)(2) of this section.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 38359, July 24, 1996; 61 FR 56431, Nov. 1, 1996; 61 FR 65988, Dec. 16, 1996; 62 FR 13841, Mar. 24, 1997; 62 FR 66831, Dec. 22, 1997; 63 FR 8361, Feb. 19, 1998; 63 FR 11168, Mar. 6, 1998; 63 FR 30401, June 4, 1998; 63 FR 32145, June 12, 1998; 63 FR 47367, Sept. 4, 1998; 63 FR 50801, Sept. 23, 1998; 64 FR 20214, Apr. 26, 1999; 64 FR 61981, Nov. 15, 1999; 65 FR 31107, May 16, 2000]

EFFECTIVE DATE NOTE: At 65 FR 4540, Jan. 28, 2000, § 679.21 was amended by adding paragraphs (d)(8) and (e)(3)(v), effective Jan. 21, 2000, through July 20, 2000. At 65 FR 39107, 39110, June 23, 2000, the effective date was extended from July 20, 2000, to Jan. 16, 2001, and paragraphs (d)(8) and (e)(3)(v) were amended by removing ''July 20, 2000'' and adding in its place ''January 16, 2001''. For the convenience of the user, the added text follows:

§ 679.21 Prohibited species bycatch management.

(d) * * *

(8) *AFA halibut bycatch limitations* (applicable through January 16, 2001). Halibut bycatch limits for AFA catcher vessels will be established according to the procedure and formula set out in § 679.63 (b) and managed through directed fishing closures for AFA catcher vessels in the groundfish fisheries to which the halibut bycatch limit applies.

* * * * *

(e) * * *

(3) * * *

(v) *AFA prohibited species catch limitations* (applicable through January 16, 2001). Halibut and crab PSC limits for AFA catcher/processors and AFA catcher vessels will be established according to the procedures and formulas set out in § 679.63 (a) and (b) and managed through directed fishing closures for AFA catcher/processors and AFA catcher vessels in the groundfish fisheries for which the PSC limit applies.

* * * * *

§ 679.22 Closures.

(a) *BSAI*—(1) *Zone 1 (512) closure to trawl gear.* No fishing with trawl gear is allowed at any time in reporting Area 512 of Zone 1 in the Bering Sea subarea.

(2) *Zone 1 (516) closure to trawl gear.* No fishing with trawl gear is allowed at any time in reporting Area 516 of Zone 1 in the Bering Sea Subarea during the period March 15 through June 15.

(3) *Red King Crab Savings Area (RKCSA).* Directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear is prohibited at all times, except as provided at § 679.21(e)(4)(ii)(B), in that part of the Bering Sea subarea defined as RKCSA in Figure 11 to this part.

(4) *Walrus protection areas.* From April 1 through September 30 of any fishing year, vessels with a Federal fisheries permit under § 679.4 are prohibited in that part of the Bering Sea subarea between 3 and 12 nm seaward of the baseline used to measure the territorial sea around islands named Round Island and The Twins, as shown on National Ocean Survey Chart 16315, and around Cape Pierce (58°33′ N. lat., 161°43′ W. long.).

(5) *Catcher Vessel Operational Area (CVOA).* The CVOA is defined as that part of the BSAI that is south of 56°00' N. lat. and between 163°00' W. long. and 167°30' W. long. (Figure 2 to part 679).

(i) *Effective time period.* The CVOA is established annually during the B season, defined at § 679.23(e)(2)(I)(B), from September 1 until the date that NMFS closes the B season allocation for the inshore component in the BSAI to directed fishing.

(ii) *Offshore component in the BSAI restrictions.* A catcher/processor vessel in the offshore component is prohibited from conducting directed fishing for pollock in the CVOA unless it is operating under a CDP approved by NMFS.

(iii) *Fisheries other than pollock.* A vessel that harvests or processes groundfish in directed fisheries for species other than pollock may operate within the CVOA consistent with the other provisions of this part.

(6) *Pribilof Island Area Habitat Conservation Zone.* Trawling is prohibited at all times in the area defined in Figure 10 to this part as the Pribilof Island Area Habitat Conservation Zone.

(7) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof District*—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 4a to this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the six Steller sea lion rookeries shown in Table 4b to this part.

(8) *Steller sea lion protection areas, Aleutian Islands Subarea*—(i) *10-nm closures.* Trawling is prohibited within 10 nm of each of the 17 Steller sea lion

rookeries shown in Table 5a to this part.

(ii) *20-nm closures.* Trawling is prohibited within 20 nm of each of the two Steller sea lion rookeries shown in Table 5b to this part.

(iii) *Western and Central Aleutian Islands critical habitat closures*—(A) *General.* Trawling is prohibited within areas designated as Steller sea lion critical habitat in the Western or Central Districts of the AI (see Table 1, Table 2, and Figure 4 to part 226 of this title) when the Regional Administrator announces by notification in the FEDERAL REGISTER that the criteria for a trawl closure in a district set out in paragraph (a)(8)(iii)(B) of this section have been met.

(B) *Criteria for closure.* The trawl closures identified in paragraph (a)(8)(iii)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of Atka mackerel specified under §679.20(a)(8)(ii)(A) reaches the following percentage identified for each year and district:

Year	Western (543) (percent)	Central (542) (percent)
1999	65	80
2000	57	67
2001	48	46
2002 and after	40	40

(C) *Duration of closure.* A Steller sea lion critical habitat area trawl closure within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

(D) *CDQ fishing.* Harvesting groundfish CDQ with trawl gear is prohibited within areas designated as Steller sea lion critical habitat in the Western and/or Central Districts of the AI (see Table 1, Table 2, and Figure 4 to part 226 of this title) for an eligible vessel listed on an approved CDP after the CDQ group has harvested the percent of the annual Atka mackerel CDQ specified for the year and district at paragraph (a)(8)(iii)(B) of this section.

(9) *Nearshore Bristol Bay Trawl Closure.* Directed fishing for groundfish by vessels using trawl gear in Bristol Bay, as described in the current edition of NOAA chart 16006, is closed at all times in the area east of 162°00′ W. long., except that the Nearshore Bristol Bay Trawl Area defined in Figure 12 to this part is open to trawling from 1200 hours A.l.t., April 1 to 1200 hours A.l.t., June 15 of each year.

(10) *Chum Salmon Savings Area.* Trawling is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also §679.21(e)(7)(vii)).

(b) *GOA*—(1) *Kodiak Island, trawls other than pelagic trawls* —(i) *Type I closures.* No person may trawl in waters of the EEZ within the vicinity of Kodiak Island, as shown in Figure 5 to this part as Type I areas, from a vessel having any trawl other than a pelagic trawl either attached or on board.

(ii) *Type II closures.* From February 15 to June 15, no person may trawl in waters of the EEZ within the vicinity of Kodiak Island, as shown in Figure 5 to this part as Type II areas, from a vessel having any trawl other than a pelagic trawl either attached or on board.

(iii) *Type III closures.* Type III areas are open to any trawl other than a pelagic trawl gear year round.

(2) *Steller sea lion protection areas*—(i) *Year-round closures.* Trawling is prohibited in the GOA within 10 nm of the 14 Steller sea lion rookeries designated in Table 6a to this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under §679.20(d), trawling is prohibited in the GOA within 20 nm of each of the three Steller sea lion rookeries presented in Table 6b to this part.

(3) [Reserved]

(4) *Southeast Outside District, gear other than nontrawl.* Use of any gear other than nontrawl gear is prohibited at all times in Southeast Outside District defined at Figure 3 to this part.

(c) *Directed fishing closures.* See §679.20(d) and §679.20(i).

(d) *Groundfish as prohibited species closures.* See §679.20(d).

(e) *Overfishing closures.* See §679.20(d).

(f) *Prohibited species closures.* See §679.21.

(g) [Reserved]

(h) *CDQ fisheries closures.* See §679.7(d)(6) through (10) for time and area closures that apply to the CDQ fisheries once salmon and crab PSQ amounts have been reached.

(i) *Forage fish closures.* See § 679.20(i)(3).

(j) *Closure of critical habitat.* All groundfish trawl fishing, as the term fishing is defined at 16 U.S.C. 1802(15) and authorized pursuant to the Fishery Management Plans for the Bering Sea/Aleutian Islands and Gulf of Alaska, within Steller sea lion critical habitat within the EEZ and west of 144°W. long., as such critical habitat is defined by regulations codified at 50 CFR 226.202 and Tables 1 and 2 of 50 CFR part 226, is prohibited.

[61 FR 31230, June 19, 1996, as amended at 61 FR 65988, Dec. 16, 1996; 62 FR 2046, Jan. 15, 1997; 63 FR 13011, Mar. 17, 1998; 63 FR 30401, June 4, 1998; 63 FR 38502, July 17, 1998; 63 FR 47367, Sept. 4, 1998; 64 FR 3451, Jan. 22, 1999; 64 FR 3658, Jan. 25, 1999; 64 FR 61970, 61982, Nov. 15, 1999; 65 FR 49769, Aug. 15, 2000]

EFFECTIVE DATE NOTE: At 65 FR 3898, Jan. 25, 2000, § 679.22 was amended by suspending paragraphs (a)(7) and (b)(2), and adding paragraphs (a)(8)(iv), (a)(11), and (b)(3), effective Jan. 20, 2000, through July 19, 2000. At 65 FR 36795, June 12, 2000, the effective date was extended to Dec. 31, 2000. For the convenience of the user, the added text follows:

§ 679.22 Closures.

(a) * * *

(8) * * *

(iv) *Pollock closure* (applicable through July 19, 2000). Directed fishing for pollock is prohibited at all times within the Aleutian Islands subarea.

* * * * *

(11) *Steller sea lion protection areas, Bering Sea subarea and Bogoslof District (applicable through July 19, 2000)*—(i) *Year-round trawl closures.* Trawling is prohibited within 10 nm of each of the Steller sea lion rookeries shown in Table 12 to this part.

(ii) *Seasonal trawl closures.* During January 1 through June 10, or a date earlier than June 10 if directed fishing for pollock is prohibited for all sectors under § 679.20, trawling is prohibited within 20 nm of each of the Steller sea lion rookeries shown in Table 12 to this part.

(iii) *Pollock closures.* Directed fishing for pollock, including pollock CDQ, is prohibited within 10 or 20 nm of each of the sea lion haulout and rookery sites shown in Table 12 to this part. The radius in nm and time period that each closure is in effect are shown in Table 12 to this part.

(iv) *Steller sea lion conservation area (SCA)*—(A) *General.* Directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, motherships in the offshore component, or directed fishing for pollock CDQ is prohibited within the SCA for the duration of a fishing season when the Regional Administrator announces, by notification in the FEDERAL REGISTER, that the harvest of a seasonal limit of pollock within the SCA by an industry component reaches the applicable percentage specified in the table following paragraph (a)(11)(iv)(D) of this section.

(B) *Boundaries.* The SCA consists of the area of the Bering Sea subarea between 170'00' W long. and 163'00' W long., south of straight lines connecting the following points in the order listed: 55°00″ N lat. 170°00″ W long.; 55°00″ N lat. 168°00″ W long.; 55°30″ N lat. 168°00″ W long.; 55°30″ N lat. 166°00″ W long.; 56°00″ N lat. 166°00″ W long.; and 56°00″ N lat. 163°00″ W long.

(C) *Seasons*—Subject to other provisions of this part, directed fishing for pollock within the SCA is authorized only during the following seasons:

(*1*) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., April 1;

(*2*) *B season.* From 1200 hours, A.l.t., April 1, through 1200 hours, A.l.t., June 10;

(*3*) *C season.* From 1200 hours, A.l.t., June 10, through 1200 hours, A.l.t., August 20;

(*4*) *D season.* From 1200 hours, A.l.t., August 20, through 1200 hours, A.l.t., November 1.

(D) *Criteria for closure*— (*1*) *General.* A directed fishing closure identified in paragraph (a)(11)(iv)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal limit of pollock within the SCA by an industry component reaches the applicable percentage specified in the following table:

Industry sector	Seasonal directed fishing allowance limits within the SCA by industry component (in percent)			
	A/B season		C/D season	
	A–SCA limit	B–SCA limit	C–SCA limit	D–SCA limit
Inshore	42	14	13.5	22.5
Catcher/processor	24.75	8.25	0	0
Mothership	37.5	12.5	0	0
CDQ	62	20.5	14	23

(*2*) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit during the A and D seasons to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the inshore limit specified in paragraph (a)(*7*)(iv)(D)(*1*) of this section has been met.

(b) * * *

(3) *Steller sea lion protection areas (applicable through July 19, 2000)*—(i) *Year-round trawl closures.* Trawling is prohibited in the GOA within 10 nm of the Steller sea lion rookeries shown in Table 13 to this part.

(ii) *Pollock closures.* Directed fishing for pollock is prohibited within 10 nm of each of the sea lion haulout and rookery sites shown in Table 13 to this part. The radius in nm and time period that each closure is in effect are shown in Table 13 to this part.

(iii) *Shelikof Strait conservation area.*—(A) *General.* Directed fishing for pollock is prohibited within the Shelikof Strait conservation area during the A and B seasons, defined at § 679.23(d)(3) of this part, when the Regional Administrator announces through notification in the FEDERAL REGISTER that the A or B season catch of pollock from within the Shelikof Strait conservation area reaches the amount determined by paragraph (b)(3)(iii)(C) of this section.

(B) *Boundaries.* The Shelikof Strait conservation area consists of the area bound by straight lines and shoreline connecting the following coordinates in the following order: 58°51′ N lat. 153°15′ W long.; 58°51′ N lat. 152°00′ W long. and the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to 57°00′ N lat. 154°00′ W long.; 56°30′ N lat. 154°00′ W long.; 56°30′ N lat. 155°00′ W long.; 56°00′ N lat. 155°00′ W long.; 56°00′ N lat. 157°00′ W long.; and the intersection of 157°00′ W long. with the Alaska Peninsula.

(C) *Determination of TAC.* NMFS will publish the pollock TAC for the Shelikof Strait conservation area in the annual specifications pursuant to § 679.20(c). The TAC is determined by calculating a ratio equal to the most recent estimate of pollock biomass in Shelikof Strait divided by the total pollock biomass in the GOA. NMFS will multiply this ratio by the overall pollock TAC for the GOA and then multiply that sum by the seasonal TAC apportionment to determine the Shelikof Strait apportionment.

* * * * *

§ 679.23 Seasons.

(a) *Groundfish, general.* Fishing for groundfish in the GOA and BSAI is authorized from 0001 hours, A.l.t., January 1, through 2400 hours, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraph (c) of this section.

(b) *Time of groundfish openings and closures.* The time of all openings and closures of fishing seasons, other than

the beginning and end of the calendar fishing year, is 1200 hours, A.l.t.

(c) *GOA and BSAI trawl groundfish.* Notwithstanding other provisions of this part, fishing for groundfish with trawl gear in the GOA and BSAI is prohibited from 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., January 20.

(d) *GOA groundfish seasons*—(1) *Directed fishing for trawl rockfish.* Directed fishing for rockfish with trawl gear is authorized from 1200 hours, A.l.t., on the first day of the third quarterly reporting period of a fishing year through 2400 hours, A.l.t., December 31, subject to other provisions of this part.

(2) *Directed fishing for pollock.* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the three seasons:

(i) From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 1;

(ii) From 1200 hours, A.l.t., June 1, through 1200 hours, A.l.t., July 1; and

(iii) From 1200 hours, A.l.t., September 1, through 2400 hours, A.l.t., December 31.

(e) *BSAI groundfish seasons*—(1) *Directed fishing for arrowtooth flounder and Greenland turbot.* Directed fishing for arrowtooth flounder and Greenland turbot in the BSAI is authorized from 1200 hours, A.l.t., May 1, through 2400 hours, A.l.t., December 31, subject to the other provisions of this part.

(2) *Directed fishing for pollock.* (i) Subject to other provisions of this part, and except as provided in paragraphs (e)(2)(ii) and (e)(2)(iii) of this section, directed fishing for pollock is authorized only during the following two seasons:

(A) *A season.* From 0001 hours A.l.t. January 1 through 1200 hours A.l.t. April 15.

(B) *B season.* From 1200 hours A.l.t. September 1 through 1200 hours A.l.t. November 1.

(ii) *Offshore component in the BSAI restrictions (applicable through December 31, 2004)*—(A) *Offshore A season.* Subject to other provisions of this part, directed fishing by the offshore component in the BSAI, or by vessels catching pollock for processing by the offshore component in the BSAI, is authorized from 1200 hours A.l.t. January 26 through 1200 A.l.t. April 15.

(B) *Offshore A season ''fair start'' requirement.* Directed fishing for pollock by the offshore component in the BSAI, or by vessels catching pollock for processing by the offshore component in the BSAI, is prohibited through 1200 hours A.l.t., February 5, for any vessel that is used to fish in a non-CDQ fishery for groundfish in the BSAI or GOA, or for king or Tanner crab in the BSAI prior to 1200 hours, A.l.t., January 26 of the same year.

(iii) *B season ''fair start'' requirement.* Directed fishing for pollock is prohibited from 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., September 8, for any vessel that is used to fish for groundfish with trawl gear in a non-CDQ fishery in the BSAI or GOA between 1200 hours, A.l.t., August 25, and 1200 hours, A.l.t., September 1.

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, directed fishing for Atka mackerel with trawl gear in the Aleutian Islands Subarea is authorized only during the following two seasons:

(i) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 15;

(ii) *B season.* From 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., November 1.

(4) *CDQ fishing seasons.* (i) *Halibut CDQ.* Fishing for CDQ halibut with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ fishing may occur only during the fishing periods specified in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title.

(ii) *Sablefish CDQ.* Fishing for CDQ sablefish with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that it may occur only during the IFQ fishing season specified in paragraph (g)(1) of this section.

(iii) *Groundfish CDQ.* Fishing for groundfish CDQ species, other than fixed gear sablefish CDQ under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1, through the end of each fishing year, except as provided in paragraph (c) of this section.

(f) *IFQ halibut.* The fishing period(s) for IFQ halibut are established by the IPHC and are specified in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title. Catches of halibut by fixed gear at times other than during the specified fishing periods must be treated as prohibited species as prescribed at § 679.21(b).

(g) *IFQ sablefish.* (1) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted in any fishing year during the period specified by the Regional Administrator and announced by publication in the FEDERAL REGISTER. The Regional Administrator will take into account the opening date of the halibut season when determining the opening date for sablefish for the purposes of reducing bycatch and regulatory discards between the two fisheries.

(2) Catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at § 679.20 when made by an individual aboard the vessel who has a valid IFQ card and unused IFQ in the account on which the card was issued.

(3) Catches of sablefish in excess of the maximum retainable bycatch amounts and catches made without IFQ must be treated in the same manner as prohibited species as defined at § 679.21(b).

(h) *Stand down requirements for trawl catcher vessels transiting between the BSAI and GOA.*

If you own or operate a catcher vessel and fish for groundfish with trawl gear in the* * *	You are prohibited from subsequently deploying trawl gear in the* * *	Until* * *
(1) BSAI while pollock or Pacific cod is open to directed fishing in the BSAI.	Western and Central Regulatory Areas of the GOA.	1200 hours A.l.t. on the third day after the date of landing or transfer of all groundfish on board the vessel harvested in the BSAI, unless you are engaged in directed fishing for Pacific cod in the GOA for processing by the offshore component.
(2) Western Regulatory Area of the GOA while pollock or inshore Pacific cod is open to directed fishing in the Western Regulatory Area of the GOA.	BSAI	1200 hours A.l.t. on the third day after the date of landing or transfer of all groundfish on board the vessel harvested in the Western Regulatory Area of the GOA, unless you are participating in a CDQ fishery.
(3) Central Regulatory Area of the GOA while pollock or inshore Pacific cod is open to directed fishing in the Central Regulatory Area of the GOA.	BSAI	1200 hours A.l.t. on the second day after the date of landing or transfer of all groundfish on board the vessel harvested in the Central Regulatory Area of the GOA, unless you are participating in a CDQ fishery.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 39602, July 30, 1996; 62 FR 2046, Jan. 15, 1997; 63 FR 11168, Mar. 6, 1998; 63 FR 30401, June 4, 1998; 63 FR 47368, Sept. 4, 1998; 63 FR 48642, Sept. 11, 1998; 64 FR 3452, Jan. 22, 1999; 64 FR 3658, Jan. 25, 1999; 64 FR 20214, Apr. 26, 1999]

EFFECTIVE DATE NOTE: At 65 FR 3899, Jan. 25, 2000, § 679.23 was amended by suspending paragraphs (d)(2) and (e)(2) and adding paragraphs (d)(3), (e)(5), and (i), effective Jan. 20, 2000, through July 19, 2000. At 65 FR 36795, June 12, 2000, the effective date was extended to Dec. 31, 2000. For the convenience of the user, the added text follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) *Directed fishing for pollock (applicable through July 19, 2000).* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., March 1;

(ii) *B season.* From 1200 hours, A.l.t., March 15, through 1200 hours, A.l.t., May 31;

(iii) *C season.* From 1200 hours, A.l.t., August 20, through 1200 hours, A.l.t., September 15.

(iv) *D season.* From 1200 hours, A.l.t., October 1, through 1200 hours, A.l.t., November 1.

(e) * * *

(5) *Directed fishing for pollock in the Bering Sea subarea (applicable through July 19, 2000)*—(i) *Inshore, offshore catcher/processor, and mothership components and Pollock CDQ fisheries.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea subarea or directed fishing for pollock CDQ in the Bering Sea subarea is authorized only during the following two seasons:

(A) *A/B season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., June 10;

(B) *C/D season.* From 1200 hours, A.l.t., June 10, through 1200 hours, A.l.t., November 1;

(ii) [Reserved]

* * * * *

(i) *Catcher vessel exclusive fishing seasons for pollock (applicable through July 19, 2000).* Catcher vessels are prohibited from participating in directed fishing for pollock under the following conditions. Vessels less than 125 ft (38.1 m) LOA are exempt from this restriction in area 620 east of 157°00' W. long. and area 630. BS and GOA seasons are provided at § 679.23(d)(3) and § 679.23(e)(4).

If you own or operate a catcher vessel and engage in directed fishing for pollock in the—	During the—	Then you are prohibited from subsequently engaging in directed fishing for pollock in the—
Bering Sea subarea	A/B season	GOA until the following C season.
	C/D season	GOA until the A season of the next year.
GOA	A season	BSAI until the following C/D season.
	B season	BSAI until the following C/D season.
	C season	BSAI until the A/B season of the following year.
	D season	BSAI until the A/B season of the following year.

§ 679.24 Gear limitations.

Regulations pertaining to vessel and gear markings are set forth in this section and as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title.

(a) *Marking of gear—longline marker buoys.* (1) All longline marker buoys carried on board or used by any vessel regulated under this part shall be marked with the following:

(i) The vessel's name; and

(ii) The vessel's Federal fisheries permit number; or

(iii) The vessel's registration number.

(2) Markings shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(b) *Gear restrictions*—(1) *Pots*—*Longline pot gear.* Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except:

(i) In the Aleutian Islands subarea.

(ii) While directed fishing for sablefish in the Bering Sea subarea, except as provided in paragraph (c)(4)(ii) of this section.

(2) *Net-sounder device.* Each person trawling in any GOA area limited to pelagic trawling under § 679.22 must maintain on that trawl a properly functioning, recording net-sounder device, and must retain all net-sounder recordings on board the fishing vessel during the fishing year.

(3) *Trawl footrope.* No person trawling in any GOA area limited to pelagic trawling under § 679.22 may allow the footrope of that trawl to be in contact with the seabed for more than 10 percent of the period of any tow, as indicated by the net-sounder device.

(4) *BSAI pollock nonpelagic trawl prohibition.* No person may use nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI.

(c) *Gear restrictions for sablefish*—(1) *Gear allocations.* Gear allocations of sablefish TAC are set out under § 679.20.

(2) *GOA Eastern Area*—(i) *General.* (A) No person may use any gear other than

hook-and-line and trawl gear when fishing for sablefish in the GOA Eastern Area.

(B) No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish.

(ii) *Sablefish as prohibited species*—(A) *Trawl gear.* When operators of vessels using trawl gear have harvested 5 percent of the TAC for sablefish in the GOA Eastern Regulatory Area during any year, further trawl catches of sablefish must be treated as prohibited species as provided by § 679.21(b).

(B) *Other gear.* Operators of vessels using gear types other than those specified in paragraph (c)(2)(i) of this section in the GOA Eastern Regulatory Area must treat any catch of sablefish as a prohibited species as provided by § 679.21(b).

(3) *GOA Central and Western Areas; sablefish as prohibited species.* Operators of vessels using gear types other than hook-and-line and trawl gear in the GOA Central and Western Regulatory Areas must treat any catch of sablefish in these areas as a prohibited species as provided by § 679.21(b).

(4) *BSAI.* (i) Operators of vessels using gear types other than hook-and-line, longline pot, pot-and-line, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

(ii) Longline pot gear is prohibited in directed fishing for sablefish from 0001 hrs, A.l.t., on June 1 until 1200 hrs, A.l.t., on June 30.

(d) *Trawl gear test areas*—(1) *General.* For purposes of allowing pelagic and nonpelagic trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) *Trawl gear testing.* For the purposes of this section, ''trawl gear testing'' means deploying trawl gear in areas designated in this paragraph (d) under the following conditions.

(i) The codend shall be unzipped while trawl gear testing.

(ii) Groundfish shall not be possessed on board when trawl gear testing.

(iii) Observers aboard vessels during the time spent trawl gear testing shall not fulfill observer requirements at subpart E of this part.

(3) *Criteria.* The establishment of test areas must comply with the following criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) *Test areas.* Trawl gear testing is allowed in the following areas (Figure 7 to this part) bounded by straight lines connecting the coordinates in the order listed, at all times:

(i) *Kodiak Test Area.*

57°37′ N. lat., 152°02′ W. long.
57°37′ N. lat., 151°25′ W. long.
57°23′ N. lat., 151°25′ W. long.
57°23′ N. lat., 152°02′ W. long.
57°37′ N. lat., 152°02′ W. long.

(ii) *Sand Point Test Area.*

54°50′ N. lat., 161°00′ W. long.
54°50′ N. lat., 160°30′ W. long.
54°35′ N. lat., 160°30′ W. long.
54°35′ N. lat., 161°00′ W. long.
54°50′ N. lat., 161°00′ W. long.

(iii) *Bering Sea Test Area.*

55°00′ N. lat., 167°00′ W. long.
55°00′ N. lat., 166°00′ W. long.
54°40′ N. lat., 166°00′ W. long.
54°40′ N. lat., 167°00′ W. long.
55°00′ N. lat., 167°00′ W. long.

(e) *Seabird avoidance gear and methods for hook-and-line vessels fishing for groundfish*—(1) *Applicability.* The operator of a vessel that is required to obtain a Federal fisheries permit under § 679.4(b)(1) must comply with the seabird avoidance measures in paragraphs (e)(2) and (e)(3) of this section while fishing for groundfish with hook-and-line gear in the BSAI, in the GOA, or in waters of the State of Alaska that are shoreward of the BSAI and the GOA.

(2) The operator of a vessel described in paragraph (e)(1) of this section must conduct fishing operations in the following manner:

(i) Use hooks that when baited, sink as soon as they are put in the water.

(ii) If offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station.

(iii) Make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds.

(3) For a vessel greater than or equal to 26 ft (7.9 m) LOA, the operator of that vessel described in paragraph (e)(1) of this section must employ one or more of the following seabird avoidance measures:

(i) Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

(ii) Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed;

(iii) Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear; or

(iv) Deploy gear only during the hours specified below, using only the minimum vessel's lights necessary for safety.

HOURS THAT HOOK-AND-LINE GEAR CAN BE DEPLOYED FOR SPECIFIED LONGITUDES ACCORDING TO PARAGRAPH (e)(3)(IV) OF THIS SECTION

[Hours are Alaska local time]

Calendar month	Longitude		
	Shoreward to 150°W	151 to 165°W	166 to 180°W
January	1800–0700	1900–0800	2000–0900
February	1900–0600	2000–0700	2100–0800
March	2000–0500	2100–0600	2200–0700
April	2100–0400	2200–0500	2300–0600
May	2200–0300	2300–0400	2400–0500
June	(1)	(1)	(1)
July	(2)	(2)	(2)
August	2200–0400	2300–0500	2400–0600
September	2000–0500	2100–0600	2200–0700
October	1900–0600	2000–0700	2100–0800
November	1800–0700	1900–0800	2000–0900
December	1700–0700	1800–0800	1900–0900

[1] This measure cannot be exercised during June.
[2] This measure cannot be exercised during July.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 49077, Sept. 18, 1996; 62 FR 23183, Apr. 29, 1997; 63 FR 11167, Mar. 6, 1998; 64 FR 61970, 61982, Nov. 15, 1999; 65 FR 31107, May 16, 2000]

§ 679.25 Inseason adjustments.

(a) *General*—(1) *Types of adjustments.* Inseason adjustments issued by NMFS under this section include:

(i) Closure, extension, or opening of a season in all or part of a management area.

(ii) Modification of the allowable gear to be used in all or part of a management area.

(iii) Adjustment of TAC and PSC limits.

(iv) Interim closures of statistical areas, or portions thereof, to directed fishing for specified groundfish species.

(2) *Determinations.* (i) Any inseason adjustment taken under paragraphs (a)(1)(i), (ii), or (iii) of this section must be based on a determination that such adjustments are necessary to prevent:

(A) Overfishing of any species or stock of fish or shellfish;

(B) Harvest of a TAC for any groundfish species or the taking of a PSC limit for any prohibited species that, on the basis of the best available scientific information, is found by NMFS to be incorrectly specified; or

(C) Underharvest of a TAC or gear share of a TAC for any groundfish species when catch information indicates that the TAC or gear share has not been reached.

(ii) Any inseason closure of a statistical area, or portion thereof, under paragraph (a)(1)(iv) of this section, must be based upon a determination that such closures are necessary to prevent:

(A) A continuation of relatively high bycatch rates of prohibited species specified under § 679.21(b) in a statistical area, or portion thereof;

(B) Take of an excessive share of PSC limits or bycatch allowances established under § 679.21(d) and (e) by vessels fishing in a statistical area, or portion thereof;

(C) Closure of one or more directed fisheries for groundfish due to excessive prohibited species bycatch rates occurring in a specified fishery operating within all or part of a statistical area; or

(D) Premature attainment of established PSC limits or bycatch allowances and associated loss of opportunity to harvest the groundfish OY.

(iii) The selection of the appropriate inseason management adjustments under paragraphs (a)(1)(i) and (ii) of this section must be from the following authorized management measures and must be based upon a determination by the Regional Administrator that the management adjustment selected is the least restrictive necessary to achieve the purpose of the adjustment:

(A) Any gear modification that would protect the species in need of conservation, but that would still allow other fisheries to continue;

(B) An inseason adjustment that would allow other fisheries to continue in noncritical areas and time periods;

(C) Closure of a management area and season to all groundfish fishing; or

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the ''other species'' category.

(iv) The adjustment of a TAC or PSC limit for any species under paragraph (a)(1)(iii) of this section must be based upon a determination by the Regional Administrator that the adjustment is based upon the best available scientific information concerning the biological stock status of the species in question and that the currently specified TAC or PSC limit is incorrect. Any adjustment to a TAC or PSC limit must be reasonably related to the change in biological stock status.

(v) The inseason closure of a statistical area, or a portion thereof, under paragraph (a)(1)(iv) of this section shall not extend beyond a 60-day period unless information considered under paragraph (b) of this section warrants an extended closure period. Any closure of a statistical area, or portion thereof, to reduce prohibited species bycatch rates requires a determination by the Regional Administrator that the closure is based on the best available scientific information concerning the seasonal distribution and abundance of prohibited species and bycatch rates of prohibited species associated with various groundfish fisheries.

(b) *Data.* All information relevant to one or more of the following factors may be considered in making the determinations required under paragraphs (a)(2)(i) and (ii) of this section:

(1) The effect of overall fishing effort within a statistical area;

(2) Catch per unit of effort and rate of harvest;

(3) Relative distribution and abundance of stocks of groundfish species and prohibited species within all or part of a statistical area;

(4) Condition of a stock in all or part of a statistical area;

(5) Inseason prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(6) Historical prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(7) Economic impacts on fishing businesses affected; or

(8) Any other factor relevant to the conservation and management of groundfish species or any incidentally caught species that are designated as prohibited species or for which a PSC limit has been specified.

(c) *Procedure.* (1) No inseason adjustment issued under this section will take effect until—

(i) NMFS has filed the proposed adjustment for public inspection with the Office of the Federal Register; and

(ii) NMFS has published the proposed adjustment in the FEDERAL REGISTER for public comment for a period of 30 days before it is made final, unless NMFS finds for good cause that such notification and public procedure is impracticable, unnecessary, or contrary to the public interest.

(2) If NMFS decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Administrator for a period of 15 days after the effective date of notification.

(3) During any such 15-day period, the Regional Administrator will make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.

(4) If written comments are received during any such 15-day period that oppose or protest an inseason adjustment issued under this section, NMFS will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either—

(i) Publish in the FEDERAL REGISTER notification of continued effectiveness of the adjustment, responding to comments received; or

(ii) Modify or rescind the adjustment.

(5) Notifications of inseason adjustments issued by NMFS under paragraph (a) of this section will include the following information:

(i) A description of the management adjustment.

(ii) Reasons for the adjustment and the determinations required under paragraph (a)(2)(i) of this section.

(iii) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will terminate on the last day of the fishing year.

§ 679.26 Prohibited Species Donation Program.

(a) *Authorized species.* The PSD program applies only to the following species:

(1) Salmon.

(2) (Applicable through December 31, 2000) Halibut delivered by catcher vessels using trawl gear to shoreside processors.

(b) *Authorized distributors*—(1) *Application.* An applicant seeking to become an authorized distributor must provide the Regional Administrator with the following information:

(i) Proof of the applicant's tax-exempt status.

(ii) A description of the arrangements for processing, shipping, storing, and transporting donated fish and an estimate of the associated costs.

(iii) A statement describing the applicant's expertise in providing for the distribution of food product from remote Alaskan locations to hunger relief agencies, food bank networks, or food bank distributors, including arrangements for transportation, distribution costs, and product quality control.

(iv) Documentation of support from cold storage and transportation facilities.

(v) A proposed operating budget that is adequate to ensure that fish donated under this program will be distributed to hunger relief agencies, food bank networks, or food bank distributors and that the fish will be maintained in a manner fit for human consumption.

(vi) Proof of the applicant's ability to obtain and maintain adequate funding for the distribution of salmon under the PSD program.

(vii) A copy of the applicant's articles of incorporation and bylaws showing that the purpose of the applicant includes providing food resources to hunger relief agencies, food bank networks, or food bank distributors.

(viii) Proof of the applicant's ability to take full responsibility for the documentation and disposition of fish received under the PSD program, including sufficient liability insurance to cover public interests relating to the quality of fish distributed for human consumption.

(ix) Quality control criteria to be followed by vessels, processors, hunger relief agencies, food bank networks, and food bank distributors.

(x) The number of vessels and processors that the applicant is capable of administering effectively.

(xi) A list of all vessels and processors, food bank networks and food bank distributors participating in the PSD program. The list of vessels and processors must include:

(A) The vessel's or processor's Federal fisheries permit number or Federal processor permit number.

(B) The name of the vessel owner or responsible operator or the name of the owner or plant manager of the processor.

(C) The vessel's or processor's telephone number and fax number.

(D) The signature of the vessel owner or responsible operator or the owner or plant manager of the processor.

(xii) A signed statement from the applicant and from all persons who are listed under paragraph (b)(1)(xi) of this section and who would conduct activities pursuant to the PSD permit waiving any and all claims against the United States and its agents and employees for any liability for personal injury, death, sickness, damage to property directly or indirectly due to activities conducted under the PSD program.

(xiii) A list of locations where fish must be delivered by participating vessels and processors.

(xiv) A separate application must be submitted for each species listed under paragraph (a) of this section that the applicant seeks to distribute.

(2) *Selection*. The Regional Administrator may select one or more tax-exempt organizations to be authorized distributors under the PSD program based on the information submitted by applicants under paragraph (b)(1) of this section. The number of authorized distributors selected by the Regional Administrator will be based on the following criteria:

(i) The number and qualifications of applicants for PSD permits.

(ii) The number of harvesters and the quantity of fish that applicants can effectively administer.

(iii) The anticipated level of bycatch of prohibited species listed under paragraph (a) of this section.

(iv) The potential number of vessels and processors participating in the groundfish trawl fisheries.

(3) *SDP Permit*. (i) After review of qualified applicants, the Regional Administrator will announce the selection of authorized distributor(s) in the FEDERAL REGISTER and will issue PSD permit(s).

(ii) The Regional Administrator may impose additional terms and conditions on a PSD permit consistent with the objectives of the PSD program.

(iii) A PSD permit may be suspended, modified, or revoked, under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for a violation of this section or other regulations in this part.

(iv) *Effective period*—(A) *Salmon*. A PSD permit for salmon remains in effect for a 3-year period after the selection notice is published in the FEDERAL REGISTER unless suspended or revoked. A PSD permit issued to an authorized distributor may be renewed following the application procedures in this section.

(B) A PSD permit issued for halibut will expire December 31, 2000.

(v) If the authorized distributor modifies any information on the PSD permit application submitted under paragraph (b)(1)(xi) or (b)(1)(xiii) of this section, the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

(c) *Reporting and recordkeeping requirements*. (1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the PSD program must comply with applicable regulations at §§ 679.7(c)(1) and 679.21(c) that allow for the collection of data and biological sampling by a NMFS-certified observer prior to processing any fish under the PSD program.

(2) Prohibited species retained under the PSD program must be packaged, and all packages must be labeled with the date of processing, the name of the processing facility, the contents and the weight of the fish contained in the package, and the words, ''NMFS PROHIBITED SPECIES DONATION PROGRAM - NOT FOR SALE - PERISHABLE PRODUCT - KEEP FROZEN''.

(3) A processor retaining or receiving fish under the PSD program and an authorized distributor must keep on file

and make available for inspection by an authorized officer all documentation, including receipt and cargo manifests setting forth the origin, weight, and destination of all prohibited species bycatch. Such documentation must be retained until 1 year after the effective period of the PSD permit.

(d) *Processing, handling, and distribution.* (1) Processing and reprocessing of all fish retained under the PSD Program must be carried out under the direction of the authorized distributor. A processor retaining or receiving fish under the PSD Program, at a minimum, must head, gut, and freeze the fish in a manner that makes it fit for human consumption.

(2) Fish that are determined to be unfit for human consumption prior to delivery to an authorized distributor must be discarded under §679.21(b). Fish that are determined to be unfit for human consumption after delivery to the authorized distributor must be destroyed in accordance with applicable sanitation laws and regulations.

(3) Authorized distributors and persons conducting activities supervised by authorized distributors may retain prohibited species only for the purpose of processing and delivering the prohibited species to hunger relief agencies, food networks or food distributors as provided by this section. Such persons may not consume or retain prohibited species for personal use and may not sell, trade or barter, or attempt to sell, trade or barter any prohibited species that is retained under the PSD program.

(4) No prohibited species that has been sorted from a vessel's catch or landing may be retained by a vessel or processor, or delivered to a delivery location under this section, unless the vessel or processor and delivery location is included on the list provided to the Regional Administrator under paragraph (b)(1)(xi), (b)(1)(xiii) or (b)(3)(v) of this section.

[61 FR 38359, July 24, 1996, as amended at 63 FR 32145, 32146, June 12, 1998]

§ 679.27 Improved Retention/Improved Utilization Program.

(a) *Applicability.* The owner or operator of a vessel that is required to obtain a Federal fisheries or processor permit under §679.4 must comply with the IR/IU program set out in this section while fishing for groundfish in the GOA or BSAI, fishing for groundfish in waters of the State of Alaska that are shoreward of the GOA or BSAI, or when processing groundfish harvested in the GOA or BSAI.

(b) *IR/IU species.* The following species are defined as ''IR/IU species'' for the purposes of this section:

(1) Pollock.

(2) Pacific cod.

(3) Rock sole in the BSAI (beginning January 1, 2003).

(4) Yellowfin sole in the BSAI (beginning January 1, 2003).

(5) Shallow-water flatfish species complex in the GOA as defined in the annual harvest specifications for the GOA (beginning January 1, 2003).

(c) *Minimum retention requirements*—(1) *Definition of retain on board.* Notwithstanding the definition at 50 CFR 600.10, for the purpose of this section, to retain on board means to be in possession of on board a vessel.

(2) The following table displays minimum retention requirements by vessel category and directed fishing status:

If you own or operate a	And	You must retain on board until lawful transfer
(i) Catcher vessel	(A) Directed fishing for an IR/IU species is open	all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited.	all fish of that species brought on board the vessel up to the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited	no fish of that species.
(ii) Catcher/ processor	(A) Directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited.	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited	no fish or product of that species.

If you own or operate a	And	You must retain on board until lawful transfer
(iii) Mothership	(A) Directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited.	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited	no fish or product of that species.

(d) *Bleeding codends and shaking longline gear.* Any action intended to discard or release an IR/IU species prior to being brought on board the vessel is prohibited. This includes, but is not limited to bleeding codends and shaking or otherwise removing fish from longline gear.

(e) *At-sea discard of product.* Any product from an IR/IU species may not be discarded at sea, unless such discarding is necessary to meet other requirements of this part.

(f) *Discard of fish or product transferred from other vessels.* The retention requirements of this section apply to all IR/IU species brought on board a vessel, whether harvested by that vessel or transferred from another vessel. At-sea discard of IR/IU species or products that were transferred from another vessel is prohibited.

(g) *IR/IU species as bait.* IR/IU species may be used as bait provided that the deployed bait is physically secured to authorized fishing gear. Dumping of unsecured IR/IU species as bait (chumming) is prohibited.

(h) *Previously caught fish.* The retention and utilization requirements of this section do not apply to incidental catch of dead or decomposing fish or fish parts that were previously caught and discarded at sea.

(i) *Minimum utilization requirements.* If you own or operate a catcher/processor or mothership, the minimum utilization requirement for an IR/IU species harvested in the BSAI is determined by the directed fishing status for that species according to the following table:

If * * *	then your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must * * *
(1) directed fishing for an IR/IU species is open,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip.
(2) directed fishing for an IR/IU species is prohibited,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRB amount for that species, whichever is lower.
(3) retention of an IR/IU species is prohibited,	equal zero.

[62 FR 63890, Dec. 3, 1997, as amended at 62 FR 65381, Dec. 12, 1997]

§ 679.28 Equipment and operational requirements.

(a) *Applicability.* This section contains the requirements for scales, observer sampling stations, and bins for volumetric estimates approved by NMFS and requirements for scales approved by the State of Alaska. This section does not require any vessel or processor to provide this equipment. Such requirements appear elsewhere in this part.

(b) *Scales used to weigh catch at sea.* In order to be approved by NMFS a scale used to weigh catch at sea must meet the type evaluation requirements set forth in paragraph (b)(1) of this section and the initial inspection and annual reinspection requirements set forth in paragraph (b)(2) of this section. Once a scale is installed on a vessel and approved by NMFS for use to weigh catch at sea, it must be reinspected annually and must be tested daily and meet the

maximum permissible error (MPE) requirements described in paragraph (b)(3) of this section.

(1) *List of scales eligible for approval.* The model of scale must be included on the Regional Administrator's list of scales eligible to be approved for weighing catch at sea before an inspector will schedule or conduct a scale inspection under paragraph (b)(2) of this section. A scale will be included on the list when the Regional Administrator receives the information specified in paragraphs (b)(1)(i) through (iv) of this section. This information identifies and describes the scale, sets forth contact information regarding the manufacturer, and sets forth the results of required type evaluations and testing. Type evaluation and testing must be conducted by a laboratory accredited by the government of the country in which the tests are conducted.

(i) *Information about the scale.* (A) Name of scale manufacturer.

(B) Name of manufacturer's representative.

(C) Mailing address of scale manufacturer and manufacturer's representative.

(D) Telephone and fax number of manufacturer's representative.

(E) Model and serial number of the scale tested.

(F) A written description of the scale and diagrams explaining how the scale operates and how it compensates for motion.

(G) A list of the model numbers of all scales for which type evaluation results are applicable, identifying the differences between the model evaluated in the laboratory and other models listed. The scales may differ only in the elements of the scale that perform motion compensation, the size or capacity of the scale, and the software used by the scale.

(H) A list of types of scale adjustments that will be recorded on the audit trail, including the name of the adjustment as it will appear on the audit trail, and a written description of the adjustment.

(ii) *Information about the laboratory.* (A) Name of laboratory.

(B) Mailing address of laboratory.

(C) Telephone and fax number of laboratory's representative.

(D) Name and address of government agency accrediting the laboratory.

(E) Name and signature of person responsible for evaluation of the scale and the date of signature.

(iii) *Checklist.* A completed checklist indicating that all applicable technical and performance standards in appendix A to this part and the laboratory tests in the annex to appendix A to this part have been met.

(iv) *Verification of test results.* Verification that a scale meets the laboratory evaluation and testing requirements in appendix A of this part and each of the influence quantity and disturbance tests as specified in the annex to appendix A to this part:

(A) Test results and data on forms supplied by NMFS;

(B) National Type Evaluation Program (NTEP) Certificates of Conformance, test results and data for a component of a scale or for the entire device. NTEP Certificates of Conformance, test results, and data may be submitted only in lieu of the specific influence factor tests conducted to obtain the NTEP Certificates of Conformance. Additional information must be submitted to verify compliance with the laboratory tests that are not performed under the NTEP; and/or

(C) International Organization of Legal Metrology (OIML) Certificates of Conformance, test results and data.

(2) *Inspection of at-sea scales*—(i) *What is an inspection?* An inspection is a visual assessment and test of a scale after it is installed on the vessel and while the vessel is tied up at a dock and not under power at sea to determine if the scale meets all of the applicable performance and technical requirements in paragraph (b)(2) of this section and in appendix A to this part. A scale will be approved by the inspector if it meets all of the applicable performance and technical requirements in paragraph (b)(2) of this section and appendix A to this part.

(ii) *How often must a scale be inspected?* Each scale must be inspected and approved before the vessel may participate in any fishery requiring the weighing of catch at sea with an approved scale. Each scale must be reinspected within 12 months of the date of the most recent inspection.

(iii) *Who may perform scale inspections*? Scales must be inspected by either a NMFS staff scale inspector or a scale inspector employed by a weights and measures agency designated by NMFS to perform scale inspections on its behalf. A list of authorized scale inspectors is available from the Regional Administrator upon request. Scale inspections are paid for by NMFS.

(A) *Inspectors from an agency designated by NMFS.* Inspectors employed by a weights and measures agency designated by NMFS to perform scale inspections on behalf of NMFS. Scale inspections by such inspectors are paid for by NMFS.

(B) *Inspectors from other agencies.* Inspectors employed by a U.S., state, or local weights and measures agency other than the weights and measures agency designated by NMFS and meeting the following requirements:

(*1*) The inspector successfully completes training conducted by a scale inspector from the weights and measures agency designated by NMFS to perform scale inspections on behalf of NMFS. The training consists of observing a scale inspection conducted by a scale inspector designated by NMFS and conducting an inspection under the supervision of a scale inspector designated by NMFS. The inspector must obtain this training for each type of scale inspected.

(*2*) The inspector notifies NMFS in writing that he/she meets the requirements of this paragraph (b)(2)(iii)(B) prior to conducting any inspections.

(*3*) Inspectors from agencies other than the weights and measures agency designated by NMFS to perform scale inspections on behalf of NMFS must notify the Regional Administrator of the date, time, and location of the scale inspection at least 3 working days before the inspection is conducted so that NMFS staff may have the opportunity to observe the inspection.

(iv) *How does a vessel owner arrange for a scale inspection?* The time and place of the inspection may be arranged by contacting the authorized scale inspectors. Vessel owners must request a scale inspection at least 10 working days in advance of the requested inspection by contacting an authorized scale inspector at the address indicated on the list of authorized inspectors.

(v) *Where will scale inspections be conducted?* Scale inspections by inspectors paid by NMFS will be conducted on vessels tied up at docks in Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

(vi) *Responsibilities of the vessel owner during a scale inspection.* After the vessel owner has installed a model of scale that is on the Regional Administrator's list of scales eligible to be approved for weighing catch at sea, the vessel owner must:

(A) Make the vessel and scale available for inspection by a scale inspector authorized by the Regional Administrator.

(B) Provide a copy of the scale manual supplied by the scale manufacturer to the inspector at the beginning of the inspection.

(C) Transport test weights, test material, and equipment required to perform the test to and from the inspector's vehicle and the location on the vessel where the scale is installed.

(D) Apply test weights to the scale or convey test materials across the scale, if requested by the scale inspector.

(E) Assist the scale inspector in performing the scale inspection and testing.

(vii) *Scale inspection report.* (A) A scale is approved for use when the scale inspector completes and signs a scale inspection report verifying that the scale meets all of the requirements specified in this paragraph (b)(2) and appendix A to this part.

(B) The scale inspector must provide the original inspection report to the vessel owner and a copy to NMFS.

(C) The vessel owner must either:

(*1*) Maintain a copy of the report on board when use of the scale is required and make the report available to the observer, NMFS personnel, or an authorized officer, upon request, or;

(*2*) Display a valid NMFS-sticker on each approved scale.

(D) When in use, an approved scale must also meet the requirements described in paragraphs (b)(3) through (b)(6) of this section.

(3) *At-sea scale tests.* To verify that the scale meets the MPEs specified in

this paragraph (b)(3), the vessel operator must test each scale or scale system used to weigh total catch one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) *Belt scales and automatic hopper scales.* (A) The MPE in the daily at-sea scale tests is plus or minus 3 percent of the known weight of the test material.

(B) *Test procedure.* A material test must be conducted by weighing at least 400 kg of fish or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the test material must be determined by weighing it on a platform scale approved for use under paragraph (b)(7) of this section.

(ii) *Platform and hanging scales*— (A) The MPE for platform and hanging scales is plus or minus 0.5 percent of the known weight of the test material.

(B) *Test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection. The amount of test weights that must be provided by the vessel owner is specified in paragraphs (b)(3)(ii)(B)(*1*) and (b)(3)(ii)(B)(*2*) of this section.

(*1*) *Platform scales used as observer sampling scales or to determine the known weight of test materials.* Any combination of test weights that will allow the scale to be tested at 10 kg, 25 kg, and 50 kg.

(*2*) *Scales used to weigh total catch.* Test weights equal to the largest amount of fish that will be weighed on the scale in one weighment.

(iii) *Requirements for all scale tests.* (A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test by placing the test material or test weights on or across the scale and recording the following information on the at-sea scale test report form:

(*1*) Vessel name;

(*2*) Month, day, and year of test;

(*3*) Time test started to the nearest minute;

(*4*) Known weight of test material or test weights;

(*5*) Weight of test material or test weights recorded by scale;

(*6*) Percent error as determined by subtracting the known weight of the test material or test weights from the weight recorded on the scale, dividing that amount by the known weight of the test material or test weights, and multiplying by 100; and

(*7*) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS personnel, or an authorized officer. In addition, the scale test report forms must be retained by the vessel owner for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(4) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use; that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value; and that no adjustment is made that will cause the scale to weigh fish inaccurately.

(5) *Printed reports from the scale* (not applicable to observer sampling scales). The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to observers, NMFS personnel, or an authorized officer. In addition, printed reports must be retained by the vessel owner for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours when use of the scale is required. Reports must also be printed before any information

stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The haul or set number as recorded in the processor's DCPL (see § 679.5);

(C) The total weight of the haul or set;

(D) The total cumulative weight of all fish or other material weighed on the scale.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to this part. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of the observer, the scale inspector, NMFS staff, or an authorized officer.

(6) *Scale installation requirements.* The scale display must be readable from where the observer collects unsorted catch.

(7) *Platform scales used as observer sampling scales or to determine the known weight of test materials.* Platform scales used only as observer sampling scales or to determine the known weight of fish for a material test of another scale are required to meet all of the requirements of paragraph (b) of this section and appendix A to this part except sections 4.3.1 and 4.3.1.5 of appendix A to this part (printer) or section 4.3.1.8 (audit trail) of appendix A to this part.

(c) *Scales approved by the State of Alaska.* Scales used to weigh groundfish catch that are also required to be approved by the State of Alaska under Alaska Statutes 45.75 must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State of Alaska sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* The scale and scale display must be visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be able to read the scale display at all times.

(3) *Printed scale weights.* Printouts of the scale weight of each haul, set, or delivery must be made available to observers, NMFS personnel, or an authorized officer at the time printouts are generated and thereafter upon request for the duration of the fishing year. Printouts must be retained by the operator or manager as specified in § 679.5(a)(13).

(d) *Observer sampling station*—(1) *Accessibility.* All of the equipment required for an observer sampling station must be available to the observer at all times while a sampling station is required and the observer is aboard the vessel, except that the observer sampling scale may be used by vessel personnel to conduct material tests of the scale used to weigh total catch under paragraph (b)(3) of this section, as long as the use of the observer's sampling scale by others does not interfere with the observer's sampling duties.

(2) *Location*—(i) *Motherships and catcher/processors or catcher vessels using trawl gear.* The observer sampling station must be located within 4 m of the location from which the observer collects unsorted catch. Clear, unobstructed passage must be provided between the observer sampling station and the location where the observer collects unsorted catch. When standing where unsorted catch is sampled, the observer must be able to see that no fish have been removed between the bin and the scale used to weigh total catch.

(ii) *Vessels using nontrawl gear.* The observer sampling station must be located within 5 m of the collection area, described at § 679.28(d)(7)(ii)(B), unless any location within this distance is unsafe for the observer. Clear, unobstructed passage must be provided between the observer sampling station and the collection area. Access must be provided to the tally station, described at § 679.28(d)(7)(ii)(A). NMFS may approve an alternative location if the vessel owner submits a written proposal describing the alternative location and the reasons why a location within 5 m of where fish are brought on board the vessel is unsafe, and the proposed observer sampling station meets

all other applicable requirements of this section.

(iii) *What is clear, unobstructed passage*? Where clear and unobstructed passage is required, passageways must be at least 65 cm wide at their narrowest point, be free of tripping hazards, and be at least 1.8 m high. Doorways or companionways must be free of obstacles.

(3) *Minimum work space.* The observer must have a working area for sampling of at least 4.5 square meters. This working area includes the observer's sampling table. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(4) *Table.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area used for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(5) *Observer sampling scale.* The observer sampling station must include a NMFS-approved platform scale with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor. The scale must be approved by NMFS under paragraph (b) of this section and must meet the maximum permissible error requirement specified in paragraph (b)(3)(ii)(A) of this section when tested by the observer.

(6) *Other requirements.* The sampling station must include flooring that prevents slipping and drains well (grating or other material where appropriate), adequate lighting, and a hose that supplies fresh or sea water to the observer.

(7) *Requirements for sampling catch*—(i) *Motherships and catcher/processors using trawl gear.* The conveyor belt conveying unsorted catch must have a removable board to allow fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch so that the observer can use this scale to weigh large samples. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling a haul.

(ii) *Catcher/processors using non-trawl gear.* In addition to the sampling station, vessels using non-trawl gear must provide: (A) *Tally station.* A place where the observer can see the gear as it leaves the water and can count and identify fish. It must be within 5 m of where fish are brought aboard the vessel and in a location where the observer is not in danger of falling overboard or being injured during gear retrieval. Where exposed to wind or seas, it must be equipped with a railing at least 1.0 m high, grating or other non-slip material, and adequate lighting.

(B) *Collection area.* A collection area is a place where the observer, or vessel crew under the observer's guidance, collects fish as they come off the line or are removed from pots. It must be located where the observer can see the gear when it leaves the water. Where exposed to wind or seas, it must be equipped with a railing at least 1.0 m high and grating or other non-slip material.

(8) *Inspection of the observer sampling station.* Each observer sampling station must be inspected and approved by NMFS prior to its use for the first time and then one time each year within 12 months of the date of the most recent inspection with the following exceptions: If the observer sampling station is moved or if the space or equipment available to the observer is reduced or removed when use of the observer sampling station is required, the observer sampling station inspection report issued under this section is no longer valid, and the observer sampling station must be reinspected and approved by NMFS. Inspection of the observer sampling station is in addition to inspection of the at-sea scales by an authorized scale inspector required at paragraph (b)(2) of this section.

(i) *How does a vessel owner arrange for an ovserver sampling station inspection?* The time and place of the inspection may be arranged by submitting to NMFS a written request for an inspection. Inspections will be scheduled no later than 10 working days after NMFS

receives a completeapplication for an inspection, including the following information:

(A) Name and signature of the person submitting the application, and the date of the application.

(B) Street address, business address, telephone number, and fax number of the person submitting the application.

(C) Whether the vessel or processor has received an observer sampling scale inspection before and, if so, the date of the most recent inspection report.

(D) Vessel name.

(E) Federal fishery permit number.

(F) Location of vessel where sampling station inspection is requested to occur, including street address and city.

(G) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station as described at paragraph (d) of this section.

(H) For all other vessels, a diagram drawn to scale showing the location(s) where catch comes on board the vessel, the location where observers will sample unsorted catch, the location of the observer sampling station, including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(I) For all vessels, a copy of the most recent scale inspection report issued under paragraph (b)(2) of this section.

(ii) *Where will observer sampling station inspections be conducted?* Inspections will be conducted on vessels tied up at docks in Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

(iii) *Observer sampling station inspection report.* An observer sampling station inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the observer sampling station meets the requirements in this paragraph (d). The vessel owner must maintain a current observer sampling station inspection report on board the vessel at all times when the vessel is required to provide an observer sampling station approved for use under this paragraph (d). The observer sampling station inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

(e) *Certified bins for volumetric estimates of catch weight*—

(1) *Certification.* The information required in this paragraph (e) must be prepared, dated, and signed by a licensed engineer with no financial interest in fishing, fish processing, or fish tendering vessels. Complete bin certification documents must be submitted to the Regional Administrator prior to harvesting or receiving groundfish from a fishery in which certified bins are required and must be on board the vessel and available to the observer at all times.

(2) *Specifications*—(i) *Measurement and marking.* The volume of each bin must be determined by accurate measurement of the internal dimensions of the bin. The internal walls of the bin must be permanently marked and numbered in 10-cm increments indicating the level of fish in the bin in cm. All marked increments and numerals must be readable from the outside of the bin through a viewing port or hatch at all times. Marked increments are not required on the wall in which the viewing port is located, unless such increments are necessary to determine the level of fish in the bin from another viewing port. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by an observer or authorized officer. For bin certification documents dated after July 6, 1998, the numerals at the 10-cm increment marks must be at least 4 cm high.

(ii) *Viewing ports.* Each bin must have a viewing port or ports from which the internal bin markings and numerals on all walls of the bin can be seen from the outside of the bin, except that bin markings and numerals are not required on the wall in which the viewing port is placed, if that wall cannot be seen from any other viewing port in the bin.

(3) *Information required.* For bin certification documents submitted after July 6, 1998, the person certifying the bins must provide:

(i) The vessel name;

(ii) The date the engineer measured the bins and witnessed the location of the marked increments and numerals;

(iii) A diagram, to scale, of each bin showing the location of the marked increments on each internal wall of the bin, the location, and dimensions of each viewing port or hatch, and any additional information needed to estimate the volume of fish in the bin;

(iv) Tables indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins;

(v) Instructions for determining the volume of fish in each bin from the marked increments and table; and

(vi) The person's name and signature and the date on which the completed bin certification documents were signed.

(4) *Recertification.* The bin's volume and the marked and numbered increments must be recertified if the bin is modified in a way that changes its size or shape or if marking strips or marked increments are moved or added.

(5) *Operational requirements*—(i) *Placement of catch in certified bins.* All catch must be placed in a bin certified under this paragraph (e) to estimate total catch weight prior to sorting. Refrigerated seawater tanks may be used for volumetric estimates only if the tanks comply with all other requirements of this paragraph (e). No adjustments of volume will be made for the presence of water in the bin or tank.

(ii) *Prior notification.* Vessel operators must notify observers prior to any removal of fish from or addition of fish to each bin used for volumetric measurements of catch so that an observer may make bin volume estimates prior to fish being removed from or added to the bin. Once a volumetric estimate has been made, additional fish may not be added to the bin until at least half the original volume has been removed. Fish may not be removed from or added to a bin used for volumetric estimates of catch weight until an observer indicates that bin volume estimates have been completed and any samples of catch required by the observer have been taken.

(iii) Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(iv) The bins must not be filled in a manner that obstructs the viewing ports or prevents the observer from seeing the level of fish throughout the bin.

[63 FR 5843, Feb. 4, 1998, as amended at 63 FR 30401, June 4, 1998; 65 FR 61982, Nov. 15, 1999; 65 FR 33782, May 25, 2000]

EFFECTIVE DATE NOTE: At 63 FR 5836, Feb. 4, 1998, § 679.28 was added, effective Mar. 6, 1998, except paragraph (b)(2)(iii)(B). This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart C—Western Alaska Community Development Quota Program

§ 679.30 General CDQ regulations.

(a) *Application procedure.* The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel or processor harvesting or processing CDQ or PSQ under a CDP must comply with all other requirements of this part. In addition, the CDQ group is responsible to ensure that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this part while harvesting or processing CDQ species. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a qualified applicant must reapply for further allocations on a competitive basis with other qualified applicants. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A qualified applicant may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period that is announced by the State. A proposed CDP must include the following information:

(1) *Community development information.* Community development information includes:

(i) *Project description.* A detailed description of all proposed CDQ projects, including the short-and long-term benefits to the qualified applicant from the proposed CDQ projects. CDQ projects should not be designed with the expectation of CDQ allocations beyond those requested in the proposed CDP.

(ii) *Project schedule.* A schedule for the completion of each CDQ project with measurable milestones for determining the progress of each CDQ project.

(iii) *Employment.* The number of individuals to be employed through the CDP projects, and a description of the nature of the work and the career advancement potential for each type of work.

(iv) *Community eligibility.* A list of the participating communities. Each participating community must be listed in Table 7 to this part or meet the criteria for an eligible community under § 679.2.

(v) *Community support.* A demonstration of each participating community's support for the qualified applicant and the managing organization through an official letter approved by the governing body of each such community.

(2) *Managing organization information.* A proposed CDP must include the following information about the managing organization:

(i) *Structure and personnel.* A description of the management structure and key personnel of the managing organization, such as resumes and references, including the name, address, fax number, and telephone number of the qualified applicant's CDQ representative.

(ii) *Management qualifications.* A description of how the managing organization is qualified to carry out the CDP projects in the proposed CDP, and a demonstration that the managing organization has the management, technical expertise, and ability to manage CDQ allocations and prevent exceeding a CDQ or PSQ.

(iii) *Legal relationship.* Documentation of the legal relationship between the qualified applicant and the managing organization (if the managing organization is different from the qualified applicant) clearly describing the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement.

(iv) *Board of directors.* The name, address, and telephone number of each member of the board of directors of the qualified applicant. If a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member from each of the communities represented.

(3) *Business information.* A proposed CDP must include the following business information:

(i) *Business relationships.* A description of all business relationships between the qualified applicant and all individuals who have a financial interest in a CDQ project or subsidiary venture, including, but not limited to, any arrangements for management and audit control and any joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties.

(ii) *Profit sharing.* A description of all profit sharing arrangements.

(iii) *Funding.* A description of all funding and financing plans.

(iv) *General budget for implementing the CDP.* A general account of estimated income and expenditures for each CDQ project for the total number of calendar years that the CDP is in effect.

(v) *Financial statement for the qualified applicant.* The most recent audited income statement, balance sheet, cash flow statement, management letter, and agreed upon procedures report.

(vi) *Organizational chart.* A visual representation of the qualified applicant's entire organizational structure, including all divisions, subsidiaries, joint ventures, and partnerships. This chart must include the type of legal entity for all divisions, subsidiaries, joint ventures, and partnerships; state of registration of the legal entity; and percentage owned by the qualified applicant.

(4) *Request for CDQ and PSQ allocations.* A list of the percentage of each CDQ reserve and PSQ reserve, as described at § 679.31 that is being requested. The request for allocations of CDQ and PSQ must identify percentage

allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

(5) *Fishing plan for groundfish and halibut CDQ fisheries.* The following information must be provided for all vessels that will be groundfish CDQ fishing, all vessels equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing, and for all shoreside processors that will take delivery of groundfish CDQ species from these vessels.

(i) *List of eligible vessels and processors*—(A) *Vessels*—(*1*) *Information required for all vessels.* A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership). For each vessel, report only the gear types and vessel types that will be used while CDQ fishing. Any CDQ vessel that is exempt from license limitation requirements under §679.4(k)(2)(iv) of this part must be identified as such.

(*2*) *Information required for observed vessels using trawl or hook-and-line gear and motherships taking deliveries from these vessels.* For each catcher/processor and catcher vessel 60 ft (18.29 m) LOA or greater using trawl or hook-and-line gear and not delivering unsorted codends, or for each mothership, the CDP must include the following information that will be used by NMFS to determine whether sufficient observer coverage is provided to sample each CDQ haul, set, or delivery. Provide the information for groundfish CDQ fishing as defined under §679.2 and provide separate information by management area or fishery if information differs among management areas or fisheries.

(*i*) Number of CDQ observers that will be aboard the vessel. For catcher/processors using hook-and-line gear proposing to carry only one CDQ observer, the CDP must include vessel logbook or observer data that demonstrates that one CDQ observer can sample each set for species composition in one 12-hour shift per fishing day.

(*ii*) Average and maximum number of hauls or sets that will be retrieved on any given fishing day while groundfish CDQ fishing.

(*iii*) For vessels using trawl gear, the average and maximum total catch weight for any given haul while groundfish CDQ fishing.

(*iv*) For vessels using trawl gear, the number of hours necessary to process the average and maximum haul size while groundfish CDQ fishing.

(*v*) For vessels using hook-and-line gear, the average number of hooks in each set and estimated time it will take to retrieve each set while groundfish CDQ fishing.

(*vi*) Whether any halibut CDQ will be harvested by vessels groundfish CDQ fishing.

(B) *Shoreside processors.* A list of the name, Federal processor permit number, and location of each shoreside processor that is required to have a Federal processor permit under §679.4(f) and will take deliveries of, or process, groundfish CDQ catch from any vessel groundfish CDQ fishing or from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing.

(ii) *Sources of data or methods for estimating CDQ and PSQ catch.* The sources of data or methods that will be used to determine catch weight of CDQ and PSQ for each vessel or processor proposed as eligible under the CDP. For each vessel or processor, the CDP must specify whether the NMFS' standard sources of data set forth at §679.32(d)(2) or some other alternative will be used. For catcher vessels using nontrawl gear, the CDP must also specify whether the vessel will be retaining all groundfish CDQ catch (Option 1) or will be discarding some groundfish CDQ catch at sea (Option 2). The qualified applicant may propose the use of an alternative method such as the sorting and weighing of all catch by species on processor vessels or using larger sample sizes than could be collected by one observer. NMFS will review the proposal and approve it or notify the qualified applicant in writing if the proposed alternative does not meet these requirements. The qualified applicant may remove the vessel or processor for which the alternative method is proposed from the proposed CDP to facilitate approval of the CDP and add the vessel or processor to the approved CDP by substantial amendment at a

later date. Alternatives to the requirement for a certified scale or an observer sampling station may not be proposed. NMFS will review the alternative proposal to determine if it meets all of the following requirements:

(A) The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable;

(B) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition;

(C) Any proposal to sort catch before it is weighed must assure that the sorting and weighing process will be monitored by an observer; and

(D) The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

(iii) *Amendments to the list of eligible vessels and processors.* The list of eligible vessels and processors may be amended by submitting the information required in paragraphs (a)(5)(i) and (ii) of this section as an amendment to the approved CDP. A technical amendment may be used to remove any vessel from a CDP, to add any vessel to a CDP if the CDQ group will use NMFS' standard sources of data to determine CDQ and PSQ catch for the vessel, or to add any vessel to a CDP for which an alternative method of determining CDQ and PSQ catch has been approved by NMFS under an approved CDP for another CDQ group. A substantial amendment must be used to add a vessel to an approved CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch for NMFS review.

(6) *CDQ planning*—(i) *Transition plan.* A proposed CDP must include an overall plan and schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries. The plan for transition to self-sufficiency must be based on the qualified applicant's long-term revenue stream without CDQs.

(ii) *Post-allocation plan.* [Reserved]

(b) *Public hearings on CDQ application.* When the CDQ application period has ended, the State must hold a public hearing to obtain comments on the proposed CDPs from all interested persons. The hearing must cover the substance and content of proposed CDPs so that the general public, particularly the affected parties, have a reasonable opportunity to understand the impact of the proposed CDPs. The State must provide reasonable public notification of hearing date and location. At the time of public notification of the hearing, the State must make available for public review all State materials pertinent to the hearing.

(c) *Council consultation.* Before the State sends its recommendations for approval of proposed CDPs to NMFS, the State must consult with the Council and make available, upon request, the proposed CDPs that are not part of the State's recommendations.

(d) *Review and approval of proposed CDPs.* The State must transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the recommendations, by October 15 of the year prior to the first year of the proposed CDP, except in 1998, when CDPs for the 1998 through 2000 multispecies groundfish CDQs must be submitted by July 6, 1998. The State shall determine in its recommendations for approval of the proposed CDPs that each proposed CDP meets all applicable requirements of this part. Upon receipt by NMFS of the proposed CDPs and the State's recommendations for approval, NMFS will review the proposed CDPs and approve those that it determines meet all applicable requirements. NMFS shall approve or disapprove the State's recommendations within 45 days of their receipt. In the event of approval of the CDP, NMFS will notify the State in writing that the proposed CDP is approved by NMFS and is consistent with all requirements for CDPs. If NMFS finds that a proposed CDP does not comply with the requirements of this part, NMFS must so advise the State in writing, including the reasons thereof. The State may submit a revised proposed CDP along with revised recommendations for approval to NMFS.

(e) *Transfer.* CDQ groups may request that NMFS transfer CDQ allocations, CDQ, PSQ allocations, or PSQ from one group to another by each group filing an appropriate amendment to its CDP. Transfers of CDQ and PSQ allocations must be in whole integer percentages, and transfers of CDQ and PSQ must be in whole integer amounts. If NMFS approves both amendments, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred by the amount transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species by the amount transferred. NMFS will not approve transfers to cover overages of CDQ or PSQ.

(1) *CDQ allocation.* CDQ groups may request that NMFS transfer any or all of one group's CDQ allocation to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(2) *CDQ.* CDQ groups may request that NMFS transfer any or all of one group's CDQ for a calendar year to another by each group filing an appropriate amendment to its CDP. If the amount to be transferred is 10 percent or less of a group's initial CDQ amount for that year, that group's request may be made through the CDP technical amendment process set forth at paragraph (g)(5) of this section. If the amount to be transferred is greater than 10 percent of a group's initial CDQ amount for the year, that group's request must be made through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(3) *PSQ allocation.* CDQ groups may request that NMFS transfer any or all of one group's PSQ allocation to another CDQ group through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of a CDQ allocation, and the requested amount of PSQ allocation must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of a PSQ allocation may be submitted to NMFS from January 1 through January 31. Requests for transfers of a PSQ allocation will not be accepted by NMFS at other times of the year. The PSQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(4) *PSQ.* CDQ groups may request that NMFS transfer any or all of one group's PSQ for one calendar year to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of CDQ, and the requested amount of PSQ must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of PSQ may be submitted to NMFS from January 1 through January 31. Requests for transfers of PSQ will not be accepted by NMFS at other times of the year. The PSQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(f) *CDQ group responsibilities.* A CDQ group's responsibilities include, but are not limited to, the following:

(1) Direct and supervise all activities of the managing organization;

(2) Maintain the capability to communicate with all vessels harvesting its CDQ and PSQ at all times;

(3) Monitor the catch of each CDQ or PSQ;

(4) Submit the CDQ catch report described at § 679.5(n)(2);

(5) Ensure that no CDQ, halibut PSQ, or crab PSQ is exceeded;

(6) Ensure that the CDQ group's CDQ harvesting vessels and CDQ processors will:

(i) Provide observer coverage, equipment, and operational requirements for CDQ catch monitoring;

(ii) Provide for the communication of observer data from their vessels to NMFS and the CDQ representative;

(iii) Maintain contact with the CDQ group for which it is harvesting CDQ and PSQ;

(iv) Cease fishing operations when requested by the CDQ group; and

(v) Comply with all requirements of this part while harvesting or processing CDQ species.

(7) Comply with all requirements of this part.

(g) *Monitoring of CDPs*—(1) *Annual progress report.* (i) The State must submit to NMFS, by October 31 of each year, an annual progress report for the previous calendar year for each CDP.

(ii) Annual progress reports must be organized on a project-by-project basis and include information for each CDQ project in the CDP describing how each scheduled milestone in the CDP has been met, and an estimation by the State of whether each of the CDQ projects in the CDP is likely to be successful.

(iii) The annual report must include a description by the State of any problems or issues in the CDP that the State encountered during the annual report year.

(2) *Annual budget report.* (i) Each CDQ group must submit to NMFS an annual budget report by December 15 preceding the year for which the annual budget applies.

(ii) An annual budget report is a detailed estimate of the income from the CDQ project and of the expenditures for each subsidiary, division, joint venture, partnership, investment activity, or CDQ project as described in paragraph (a)(1)(i) of this section for a calendar year. A CDQ group must identify the administrative costs for each CDQ project. The CDQ group's total administrative costs will be considered a separate CDQ project.

(iii) An annual budget report is approved upon receipt by NMFS, unless disapproved by NMFS in writing by December 31. If disapproved, the annual budget report will be returned to the CDQ group for revision and resubmittal to NMFS.

(3) *Annual budget reconciliation report.* A CDQ group must reconcile its annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDQ project that is described in paragraph (a)(1)(i) of this section.

(4) *Substantial amendments.* A CDP is a working business plan and must be kept up to date.

(i) Substantial amendments to a CDP require a written request by the CDQ group to the State and NMFS for approval of the amendment. The State must forward the amendment to NMFS with a recommendation as to whether it should be approved.

(ii) NMFS will notify the State in writing of the approval or disapproval of the amendment within 30 days of receipt of both the amendment and the State's recommendation. Except for substantial amendments for the transfer of CDQ and PSQ, which are effective only for the remainder of the calendar year in which the transfer occurs (see paragraphs (e)(2) and (4) of this section), once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

(iii) If NMFS determines that the CDP, if changed, would no longer meet the requirements of this subpart, NMFS will notify the State in writing of the reasons why the amendment cannot be approved.

(iv) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to:

(A) Any change in the list of communities comprising the CDQ group or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of $100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDQ group and its harvesting or processing partner or a change in a CDP project, if such change is deemed by the State or NMFS to be a material change.

(G) Any transfer of a CDQ allocation, PSQ allocation, PSQ, or a transfer of more than 10 percent of a CDQ.

(H) The addition of a vessel to a CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch under paragraph (a)(5)(ii) of this section for NMFS review.

(v) The request for approval of a substantial amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate.

(B) An explanation of why the proposed change to the CDP is a substantial amendment.

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment.

(D) A comparison of the original CDP text, with the text of the proposed changes to the CDP, and the revised pages of the CDP for replacement in the CDP binder. The revised pages must have the revision date noted, with the page number on all affected pages. The table of contents may also need to be revised to reflect any changes in pagination.

(E) Identification of any NMFS findings that would need to be modified if the amendment is approved, along with the proposed modified text.

(F) A description of how the proposed amendment meets the requirements of this subpart. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(5) *Technical amendments.* Any change to a CDP that is not considered a substantial amendment under paragraph (g)(4)(iv) of this section is a technical amendment.

(i) The CDQ group must notify the State in writing of any technical amendment. Such notification must include a copy of the pages of the CDP that would be revised by the amendment, with the text highlighted to show the proposed deletions and additions, and a copy of the CDP pages as they would be revised by the proposed amendment for insertion into the CDP binder. All revised CDP pages must include the revision date, amendment identification number, and CDP page number. The table of contents may also need to be revised to reflect any changes in pagination.

(ii) The State must forward the technical amendment to NMFS with its recommendations for approval or disapproval of the amendment. A technical amendment is approved by NMFS and is effective when, after review, NMFS notifies the State in writing of the technical amendment's receipt and approval.

(h) *Suspension or termination of a CDP.* An annual progress report, required under paragraph (g)(1) of this section, will be used by the State to review each CDP to determine whether the CDP, CDQ, and PSQ allocations thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(1) If the State determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(2) If the State recommends to NMFS that an allocation be decreased, the State's recommendation for decrease will be deemed approved if NMFS does not notify the State in writing within 30 days of receipt of the State's recommendation.

(3) If the State determines that a CDP has not successfully met its goals and objectives or appears unlikely to become successful, the State may submit a recommendation to NMFS that the CDP be partially suspended, suspended, or terminated. The State must set out, in writing, the reasons for recommending suspension or termination of the CDP.

(4) After review of the State's recommendation and reasons thereof, NMFS will notify the Governor, in writing, of approval or disapproval of the recommendation within 30 days of

its receipt. In the case of suspension or termination, NMFS will publish notification in the FEDERAL REGISTER, with reasons thereof.

[63 FR 30403, June 4, 1998, as amended at 64 FR 3882, Jan. 26, 1999; 64 FR 20214, Apr. 26, 1999; 65 FR 45318, July 21, 2000]

EFFECTIVE DATE NOTE: At 63 FR 30403, June 4, 1998, § 679.30 was revised. Section 679.30(a)(5)(i)(A)(2) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 679.31 CDQ reserves.

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ applicants in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of the total CDQ for all subareas and districts combined to any one applicant with an approved CDP application.

(a) *Pollock CDQ reserve.* In the proposed and final harvest specifications required by § 679.20(c), one-half of the pollock TAC placed in the reserve for each subarea or district of the BSAI will be apportioned to a CDQ reserve for each subarea or district.

(b) *Halibut CDQ reserve.* (1) NMFS will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in paragraph (b) of this section for use as a CDQ reserve.

(2) Portions of the CDQ for each specified IPHC regulatory area may be allocated for the exclusive use of an eligible Western Alaska community or group of communities in accordance with a CDP approved by the Governor in consultation with the Council and approved by NMFS.

(3) The proportions of the halibut catch limit annually withheld for the halibut CDQ program, exclusive of issued QS, and the eligible communities for which they shall be made available are as follows for each IPHC regulatory area (see Figure 15 to this part):

(i) *Area 4B.* In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available to eligible communities physically located in, or proximate to, this regulatory area.

(ii) *Area 4C.* In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available to eligible communities physically located in IPHC regulatory area 4C.

(iii) *Area 4D.* In IPHC regulatory area 4D, 30 percent of the annual halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory areas 4D and 4E.

(iv) *Area 4E.* In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing trip limit of 6,000 lb (2.7 mt) applies to halibut CDQ harvesting in IPHC regulatory area 4E.

(4) For the purposes of this section, ''proximate to'' an IPHC regulatory area means within 10 nm from the point where the boundary of the IPHC regulatory area intersects land.

(c) *Groundfish CDQ reserves.* (See § 679.20(b)(1)(iii))

(d) *Crab CDQ reserves.* King and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska that is available for commercial harvest are apportioned to a crab CDQ reserve as follows:

(1) For calendar year 2000, and thereafter, 7.5 percent; and

(2) For calendar year 1999 (applicable through December 31, 1999), 5 percent.

(e) *PSQ reserve.* (See § 679.21(e)(1)(i) and (e)(2)(ii)).

(f) *Non-specific CDQ reserve.* Annually, NMFS will apportion 15 percent of each squid, arrowtooth flounder, and ''other species'' CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to the CDQ group's squid, arrowtooth flounder, or ''other species'' CDQ is a technical amendment as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred

from the non-specific CDQ reserve may be conducted.

[63 FR 8361, Feb. 19, 1998, as amended at 63 FR 30407, June 4, 1998; 64 FR 3882, Jan. 26, 1999; 64 FR 20214, Apr. 26, 1999; 64 FR 61982, Nov. 15, 1999]

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) *Applicability*. (1) The CDQ group, the operator of a vessel groundfish CDQ fishing as defined at §679.2, the operator of a catcher/processor halibut CDQ fishing as defined at §679.2, the operator of a catcher vessel equal to or greater than 60 ft (18.3 m) LOA halibut CDQ fishing, the operator of a mothership taking deliveries from these vessels, and the manager of a shoreside processor taking deliveries from these vessels must comply with the requirements of paragraphs (b) through (d) of this section for all groundfish CDQ and PSQ. For the catch of halibut CDQ or for vessels halibut CDQ fishing, the CDQ group, the operator of the vessel, the shoreside processor, and the registered buyer must comply with the requirements of paragraph (f) of this section. In addition, the CDQ group is responsible for ensuring that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this section while harvesting or processing CDQ species.

(2) *Pollock CDQ (applicable through July 20, 1999)*. Requirements for the accounting of pollock while CDQ fishing are at paragraph (e) of this section.

(b) *PSQ catch*. Time and area closures required once a CDQ group has reached its salmon PSQ or crab PSQ are listed in §679.7(d)(7) through (10). The catch of salmon or crab by vessels using other than trawl gear does not accrue to the PSQ for these species. The discard of halibut by vessels using pot or jig gear will not accrue to the halibut PSQ if this bycatch has been exempted from the halibut PSC limit under §679.21(e)(5) in the annual specifications published in the FEDERAL REGISTER.

(c) *Requirements for vessels and processors*. In addition to complying with the minimum observer coverage requirements at §679.50(c)(4), operators of vessels groundfish CDQ fishing and managers of shoreside processors taking deliveries from vessels groundfish CDQ fishing must comply with the following requirements:

(1) *Catcher vessels without an observer*. (i) Operators of catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish CDQ, halibut CDQ, and salmon PSQ until it is delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section. All halibut PSQ and crab PSQ must be discarded at sea. Operators of catcher vessels using trawl gear must report the at-sea discards of halibut PSQ or crab PSQ on the CDQ delivery report (see §679.5(n)(1)). Operators of catcher vessels using nontrawl gear must report the at-sea discards of halibut PSQ on the CDQ delivery report, unless exempted from accounting for halibut PSQ under paragraph (b) of this section.

(ii) *Catcher vessels delivering unsorted codends*. Operators of catcher vessels delivering unsorted codends to motherships must retain all CDQ and PSQ species and deliver them to a mothership that meets the requirements of paragraph (c)(4) of this section.

(2) *Catcher vessels with observers*. Operators of catcher vessels equal to or greater than 60 ft (18.29 m) LOA must comply with the following requirements:

(i) *If using trawl gear, the vessel operator must:*

(A) Retain all CDQ species and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section;

(B) Retain all halibut and crab PSQ in a bin or other location until it is counted and sampled by a CDQ observer; and

(C) Provide space on the deck of the vessel for the CDQ observer to sort and store catch samples and a place from which to hang the observer sampling scale.

(ii) *If using nontrawl gear, the vessel operator must either:*

(A) *Option 1: Retain all CDQ species*. Retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section and have all of the

halibut PSQ counted by the CDQ observer and sampled for length or average weight; or

(B) *Option 2: Discard some CDQ species at sea.* May discard some CDQ species at sea if the following requirements are met:

(*1*) *Observer sampling station.* The vessel owner provides an observer sampling station that complies with § 679.28(d) so that the CDQ observer can accurately determine the average weight of discarded CDQ species. A valid observer sampling station inspection report described at § 679.28(d)(8) must be on board the vessel at all times when a sampling station is required; and

(*2*) *Species composition.* Each CDQ set on vessels using hook-and-line gear is sampled for species composition by a CDQ observer.

(3) *Shoreside processors and vessels of the United States operating solely as a mothership in Alaska State waters.* The manager of a shoreside processor or the operator of a vessel of the United States operating solely as a mothership in Alaska State waters must comply with all of the following requirements:

(i) *Prior notice to observer of offloading schedule.* Notify the CDQ observer of the offloading schedule of each CDQ delivery at least 1 hour prior to offloading to provide the CDQ observer an opportunity to monitor the sorting and weighing of the entire delivery.

(ii) *CDQ and PSQ by weight.* Sort and weigh on a scale approved by the State of Alaska under § 679.28(c) all groundfish and halibut CDQ or PSQ by species or species group.

(iii) *PSQ by number.* Sort and count all salmon and crab PSQ.

(iv) *CDQ and PSQ sorting and weighing.* Sorting and weighing of CDQ and PSQ must be monitored by a CDQ observer.

(v) *CDQ delivery report.* Submit a CDQ delivery report described at § 679.5(n)(1) for each delivery of groundfish CDQ.

(4) *Catcher/processors and motherships.* The operator of a catcher/processor or a mothership taking deliveries of unsorted codends from catcher vessels must comply with the following requirements:

(i) *Prior notice to observer of CDQ catch.* Notify the CDQ observer(s) before CDQ catch is brought onboard the vessel and notify the CDQ observer(s) of the CDQ group and CDQ number associated with the CDQ catch.

(ii) *Observer sampling station.* Provide an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report described at § 679.28(d)(8) must be on board the vessel at all times when a sampling station is required.

(iii) Obtain the data entry software provided by the Regional Administrator (''ATLAS software'') for use by the observer and ensure that observer data can be transmitted from the vessel to NMFS at any time while the vessel is receiving, catching or processing CDQ species.

(iv) *Catcher/processors using trawl gear and motherships.* The operator of a catcher/processor using trawl gear or of a mothership taking deliveries of unsorted codends from catcher vessels must weigh all catch on a scale that complies with the requirements of § 679.28(b). A valid scale inspection report described at § 679.28(b)(2) must be on board the vessel at all times when a scale is required. Catch from each CDQ haul must be weighed separately. Catch must not be sorted before it is weighed, unless a provision for doing so is approved by NMFS for the vessel in the CDP. Each CDQ haul must be sampled by a CDQ observer for species composition and the vessel operator must allow CDQ observers to use any scale approved by NMFS to weigh partial CDQ haul samples.

(v) *Catcher/processors using nontrawl gear.* Each CDQ set on a vessel using hook-and-line gear must be sampled by a CDQ observer for species composition and average weight.

(d) *Recordkeeping and reporting*—(1) *Catch record.* The manager of a shoreside processor or the operator of a vessel of the U.S. operating solely as a mothership in Alaska state waters must submit to NMFS the CDQ delivery report required in § 679.5(n)(1). The CDQ representative must submit to NMFS the CDQ catch report required in § 679.5(n)(2). Additionally, all other applicable requirements in § 679.5 for groundfish fishing must be met.

(2) *Verification of CDQ and PSQ catch reports.* CDQ groups may specify the sources of data listed below as the sources they will use to determine CDQ and PSQ catch on the CDQ catch report by specifying ''NMFS standard sources of data'' in their CDP. In the case of a catcher vessel using nontrawl gear, the CDP must specify whether the vessel will be retaining all groundfish CDQ (Option 1) or discarding some groundfish CDQ species at sea (Option 2). CDQ species may be discarded at sea by these vessels only if the requirements of paragraph (c)(2)(ii)(B) of this section are met. NMFS will use the following sources to verify the CDQ catch reports, unless an alternative catch estimation procedure in the CDP is approved by NMFS under § 679.30(a)(5)(ii).

(i) *Catcher vessels less than 60 ft (18.29 m) LOA.* The weight or numbers of all CDQ and PSQ species will be the same as the information on the CDQ delivery report if all CDQ species and salmon PSQ are retained on board the vessel, delivered to a shoreside processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section.

(ii) *Catcher vessels delivering unsorted codends.* The weight and numbers of CDQ and PSQ species will be determined by applying the species composition sampling data collected for each CDQ haul by the CDQ observer on the mothership to the total weight of each CDQ haul as determined by weighing all catch from each CDQ haul on a scale approved under § 679.28(b).

(iii) *Observed catcher vessels using trawl gear.* The weight of halibut and numbers of crab PSQ discarded at sea will be determined by using the CDQ observer's sample data. The weight or numbers of all groundfish CDQ and salmon PSQ will be the same as the information submitted on the CDQ delivery report if all CDQ species and salmon PSQ are retained on board the vessel until delivered to a processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section.

(iv) *Observed catcher vessels using nontrawl gear*—(A) *Option 1.* The weight of halibut PSQ discarded at sea will be determined by using the CDQ observer's sample data. The weight of all groundfish CDQ will be the same as the information submitted on the CDQ delivery report if all CDQ species are retained on board the vessel until delivered to a processor, and sorted and weighed in compliance with paragraph (c)(3) of this section (Option 1); or

(B) *Option 2.* The weight of halibut PSQ and all groundfish CDQ species will be determined by applying the CDQ observer's species composition sampling data to the estimate of total catch weight if any CDQ species are discarded at sea.

(v) *Catcher/processors using trawl gear.* The weight and numbers of CDQ and PSQ species will be determined by applying the CDQ observer's species composition sampling data for each CDQ haul to the total weight of the CDQ haul as determined by weighing all catch from each CDQ haul on a scale certified under § 679.28(b).

(vi) *Catcher/processors using nontrawl gear.* The weight of halibut PSQ and all groundfish CDQ species will be determined by applying the CDQ observer's species composition sampling data to the estimate of total catch weight, if any CDQ species are discarded at sea.

(e) [Reserved]

(f) *Halibut CDQ*—(1) *Applicability*. The CDQ group, the operator of the vessel, the manager of a shoreside processor, and the registered buyer must comply with the requirements of this paragraph (f) for the catch of halibut CDQ or while halibut CDQ fishing.

(2) *Accounting for halibut CDQ catch*—(i) *Halibut CDQ permit.* The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is nontransferable and is issued annually until revoked, suspended, or modified.

(ii) *Halibut CDQ card.* An individual must have onboard the vessel a valid halibut CDQ card issued by the Regional Administrator before landing any halibut CDQ. Each halibut CDQ card will identify a CDQ permit number and the individual authorized by

the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

(iii) *Alteration*. No person may alter, erase, mutilate, or forge a halibut CDQ permit, landing card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(iv) *Landings*. A person may land halibut CDQ only if he or she has a valid halibut CDQ card, and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the registered buyer must comply with the requirements of § 679.5(l)(1) and (l)(2).

(v) The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at § 679.7(f).

(3) *Accounting for catch of groundfish CDQ while halibut CDQ fishing*. The manager of a shoreside processor must report on a CDQ delivery report described at § 679.5(n)(1), all groundfish CDQ delivered by vessels equal to or greater than 60 ft (18.3 m) LOA while halibut CDQ fishing and all sablefish CDQ delivered by vessels of any size while halibut CDQ fishing. The CDQ group must report on a CDQ catch report described at § 679.5(n)(2), all groundfish CDQ caught by vessels equal to or greater than 60 ft (18.3 m) LOA while halibut CDQ fishing and all sablefish CDQ retained by vessels of any size while halibut CDQ fishing. This groundfish CDQ will accrue to the CDQ group's groundfish CDQ allocations. The manager of a shoreside processor and the CDQ group are not required to report on the CDQ delivery report, groundfish, except sablefish CDQ, that is caught by vessels less than 60 ft (18.3 m) LOA while halibut CDQ fishing, and this catch (except sablefish CDQ) will not accrue against the CDQ group's groundfish CDQ allocations.

(4) *Groundfish CDQ retention requirements*. Operators of vessels less than 60 ft (18.3 m) LOA are not required to retain and deliver groundfish CDQ species while halibut CDQ fishing, unless required to do so elsewhere in this part. Operators of vessels equal to or greater than 60 ft (18.3 m) LOA are required to comply with all groundfish CDQ and PSQ catch accounting requirements in paragraphs (b) through (d) of this section, including the retention of all groundfish CDQ, if option 1 under § 679.32(c)(2)(ii) is selected in the CDP.

(5) *Observer coverage requirements*. The owner or operator of a vessel equal to or greater than 60 ft (18.3 m) LOA halibut CDQ fishing as defined at § 679.2 or shoreside processors taking deliveries from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing must comply with observer coverage requirements at § 679.50(c)(4) and (d)(4).

[63 FR 30407, June 4, 1998, as amended at 64 FR 3882, Jan. 26, 1999; 64 FR 20214, Apr. 26, 1999; 64 FR 61982, Nov. 15, 1999; 65 FR 33783, May 25, 2000]

EFFECTIVE DATE NOTE: At 63 FR 30407, June 4, 1998, § 679.32 was revised. Paragraph 679.32(c)(4)(i) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart D—Individual Fishing Quota Management Measures

§ 679.40 Sablefish and halibut QS.

The Regional Administrator shall annually divide the TAC of halibut and sablefish that is apportioned to the fixed gear fishery pursuant to the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title and § 679.20, minus the CDQ reserve, among qualified halibut and sablefish quota share holders, respectively.

(a) *Initial allocation of QS*—(1) *General*. The Regional Administrator shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories. QS will be assigned as a block in the appropriate IFQ regulatory area and vessel category, if that QS would have resulted in an allocation of less than 20,000 lb (9 mt) of IFQ for halibut or sablefish based on the 1994 TAC for fixed gear in those fisheries for specific IFQ regulatory areas

and the QS pools of those fisheries for specific IFQ regulatory areas as of October 17, 1994.

(2) *Qualified person.* (i) As used in this section, a ''qualified person'' means a ''person,'' as defined in § 679.2:

(A) That owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year; or

(B) That leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person who owns a vessel cannot be a qualified person based on the legal fixed gear landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease.

(ii) Qualified persons, or their successors-in-interest, must exist at the time of their application for QS.

(iii) A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his or her interest in the dissolved partnership or corporation.

(iv) Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining whether a person is a qualified person.

(3) *Qualification for QS*—(i) *Year.* A QS qualifying year is 1988, 1989, or 1990.

(ii) *Vessel ownership.* Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(A) For vessels required to be documented under the laws of the United States, the USCG abstract of title issued in respect of that vessel.

(B) A certificate of registration that is determinative as to vessel ownership.

(C) A bill of sale.

(iii) *Vessel lease.* Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

(iv) *Ownership interest.* Evidence of ownership interest in a dissolved partnership or corporation shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(v) *Legal landing of halibut or sablefish*—(A) *Definition.* As used in this section, a ''legal landing of halibut or sablefish'' means halibut or sablefish harvested with fixed gear and landed in compliance with state and Federal regulations in effect at the time of the landing.

(B) *Documentation.* Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of halibut or sablefish harvested, the IPHC regulatory area or groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting. State catch reports are Alaska, Washington, Oregon, or California fish tickets. Federal catch reports are WPRs required under § 679.5. Sablefish harvested within Prince William Sound or under a State of Alaska limited entry program will not be considered in determining qualification to receive QS, nor in calculating initial QS.

(4) *Calculation of initial QS*—(i) *Halibut QS.* The Regional Administrator shall calculate the halibut QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of halibut in each IPHC regulatory area for any 5 years of the 7-year halibut QS base period 1984 through 1990. The sum of all halibut QS for an IFQ regulatory area will be the halibut QS pool for that area.

(ii) *Sablefish QS.* The Regional Administrator shall calculate the sablefish QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of sablefish in each groundfish reporting area for any 5 years of the 6-year sablefish QS base period 1985 through 1990.

The sum of all sablefish QS for an IFQ regulatory area will be the sablefish QS pool for that area.

(iii) *CDQ program.* Each initial QS calculation will be modified to accommodate the CDQ program prescribed at subpart C of this part.

(5) *Assignment of QS to vessel categories*—(i) *LOA.* Each qualified person's QS will be assigned to a vessel category based on the LOA of vessel(s) from which that person made fixed gear legal landings of groundfish or halibut in the most recent year of participation and the product type landed. As used in this paragraph (a)(5), ''the most recent year of participation'' means the most recent of 4 calendar years in which any groundfish or halibut were harvested using fixed gear, as follows: 1988, 1989, or 1990; or calendar year 1991 prior to September 26, 1991.

(ii) *Vessel categories.* QS and its associated IFQ assigned to vessel categories include:

(A) Category A QS and associated IFQ, which authorizes an IFQ cardholder to harvest and process IFQ species on a vessel of any length;

(B) Category B QS and associated IFQ, which authorizes an IFQ cardholder to harvest IFQ species on a vessel of any length, except as provided in § 679.42(a);

(C) Category C QS and associated IFQ, which authorizes an IFQ cardholder to harvest IFQ species on a vessel less than or equal to 60 ft (18.3 m) LOA:

(D) Category D QS and associated IFQ, which authorizes an IFQ cardholder to harvest IFQ halibut on a vessel less than or equal to 35 ft (10.7 m) LOA;

(iii) *QS assignment.* A qualified person's QS will be assigned:

(A) To vessel category A if, at any time during his/her most recent year of participation, that person's vessel processed any groundfish or halibut caught with fixed gear.

(B) To vessel category B if, at any time during his/her most recent year of participation, that person's vessel was greater than 60 ft (18.3 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(C) To each applicable vessel category in proportion to the landings of halibut or sablefish made by that person if, at any time during their most recent year of participation, that person used more than one vessel in different categories.

(iv) *Sablefish QS.* A qualified person's sablefish QS will be assigned:

(A) To vessel category C if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 ft (18.3 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(B) To the vessel category in which halibut and groundfish were landed, or vessel categories in proportion to the total fixed gear landings of halibut and groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of sablefish.

(v) *Halibut QS.* A qualified person's halibut QS will be assigned:

(A) To vessel category C if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 ft (18.3 m), but greater than 35 ft (10.7 m), LOA and did not process any groundfish or halibut caught with fixed gear.

(B) To vessel category D if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 35 ft (10.7 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(C) To the vessel category in which groundfish were landed, or vessel categories in proportion to the total fixed gear landings of groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of halibut.

(vi) *Both species QS.* A qualified person's QS for both species will be assigned to the vessel category in which groundfish were landed in the most recent year of participation if, at any time during that year, that person landed halibut in one vessel category and sablefish in a different vessel category.

(6) *Application for initial QS*—(i) *Application form.* Upon request, the Regional Administrator shall make available to any person an application form for an initial allocation of QS. The application form sent to the person requesting a QS allocation will include all data on

that person's vessel ownership and catch history of halibut and sablefish that can be released to the applicant under current state and Federal confidentiality rules, and that are available to the Regional Administrator at the time of the request.

(ii) *Application period.* An application period of no less than 180 days will be specified by notification in the FEDERAL REGISTER and other information sources that the Regional Administrator deems appropriate.

(iii) *Complete application.* Complete applications received by the Regional Administrator will be acknowledged. An incomplete application will be returned to the applicant with specific kinds of information identified that are necessary to make it complete.

(7) *Insufficient documentation.* Halibut and sablefish catch history, vessel ownership or lease data, and other information supplied by an applicant will be compared with data compiled by the Regional Administrator. If additional data presented in an application are not consistent with the data compiled by the Regional Administrator, the applicant will be notified of insufficient documentation. The applicant will have 90 days to submit corroborating documents (as specified in paragraph (a) of this section) in support of his/her application or to resubmit a revised application. All applicants will be limited to one opportunity to provide corroborating documentation or a revised application in response to notification of insufficient documentation.

(8) *Verified data.* Uncontested data in applications will be approved by the Regional Administrator. Based on these data, the Regional Administrator will calculate each applicant's initial halibut and sablefish QS, as provided in paragraph (b) of this section, for each IFQ regulatory area, respectively, and will add each applicant's halibut and sablefish QS for an IFQ regulatory area to the respective QS pool for that area.

(9) *Unverified data.* Catch history, vessel ownership, or lease data that cannot be verified by the Regional Administrator, following the procedure described in paragraph (a)(7) of this section, will not qualify for QS. An initial determination denying QS on the grounds that claimed catch history, vessel ownership or lease data were not verified may be appealed following the procedure described in § 679.43. Quota share reflecting catch history, vessel ownership, or lease data that are contested between two or more applicants, at least one of which is likely to qualify for QS when the dispute is resolved, will be assigned to a reserve that will be considered part of the QS pool for the appropriate IFQ regulatory area. Any QS and IFQ that results from agency action resolving the dispute will be assigned to the prevailing applicant(s) pursuant to paragraphs (a)(4), (a)(5), (b), and (c) of this section. If the assigned IFQ for the 1995 fishing season becomes moot by passage of time needed to resolve the dispute, the assignment of QS and IFQ for subsequent fishing seasons will be unaffected.

(b) *Annual allocation of IFQ.* The Regional Administrator shall assign halibut or sablefish IFQs to each person holding unrestricted QS for halibut or sablefish, respectively, up to the limits prescribed in § 679.42 (e) and (f). Each assigned IFQ will be specific to an IFQ regulatory area and vessel category, and will represent the maximum amount of halibut or sablefish that may be harvested from the specified IFQ regulatory area and by the person to whom it is assigned during the specified fishing year, unless the IFQ assignment is changed by the Regional Administrator within the fishing year because of an approved transfer or because all or part of the IFQ is sanctioned for violating rules of this part.

(c) *Calculation of annual IFQ allocation*—(1) *General.* The annual allocation of IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the TAC of halibut or sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska CDQ Program) and that person's QS divided by the QS pool for that area. Overages will be subtracted from a person's IFQ pursuant to paragraph (d) of this section. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$IFQ_{pa} = [(\text{fixed gear } TAC_a - \text{CDQ reserve}_a) \times (QS_{pa}/QS\ pool_a)] - \text{overage of } IFQ_{pa}.$$

(2) *QS amounts.* For purposes of calculating IFQs for any fishing year, the

amount of a person's QS and the amount of the QS pool for any IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS, as of 1200 hours, A.l.t., on January 31 of that year.

(3) *IFQ permit*. The Regional Administrator shall issue to each QS holder, pursuant to §679.4, an IFQ permit accompanied by a statement specifying the maximum amount of halibut and sablefish that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category as of January 31 of that year. Such IFQ permits will be mailed to each QS holder at the address on record for that person after the beginning of each fishing year but prior to the start of the annual IFQ fishing season.

(d) *Ten-percent adjustment policy*. A person's annual IFQ account will be adjusted in the year following a determination that the person harvested or landed IFQ species in an amount is greater than the amount available in the person's annual IFQ account and if the amount greater than the amount available does not exceed 10 percent of the amount available in the person's annual IFQ account at the time of landing. The adjustment would be a deduction of the amount of IFQ species harvested or landed that was determined to exceed the amount available in the person's annual IFQ account and will apply to any person to whom the affected IFQ is allocated in the year following the determination.

(e) *Underages*. Underages of up to 10 percent of a person's total annual IFQ account for a current fishing year will be added to that person's annual IFQ account in the year following determination of the underage. This underage adjustment to the annual IFQ allocation will be specific to IFQ species, IFQ regulatory area, and vessel category for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an underage.

(f) *Harvesting privilege*. Quota shares allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the ''takings'' provision of the Fifth Amendment of the U.S. Constitution. Rather, such quota shares or permits represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.

(g) *Tagged halibut and sablefish*. (1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture a research tag from any state, Federal, or international agency, provided that the halibut or sablefish is:

(i) A Pacific halibut landed pursuant to 50 CFR 300.18; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program.

(2) Tagged halibut or sablefish landed pursuant to paragraphs (1)(i) or (1)(ii) of this section shall not be calculated as part of an individual's IFQ harvest or be debited against an individual's halibut or sablefish IFQ.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 41525, Aug. 9, 1996; 61 FR 43314, Aug. 22, 1996; 62 FR 59299, Nov. 3, 1997]

§ 679.41 Transfer of quota shares and IFQ.

(a) *General*. (1) Except as provided in paragraph (a)(2) of this section, transfer of QS or IFQ means any transaction requiring QS, or the use thereof in the form of IFQ, to pass from one person to another, permanently or for a fixed period of time.

(2) Transactions requiring IFQ cards to be issued in the name of a vessel master employed by an individual or a corporation are not transfers of QS or IFQ.

(b) *Transfer procedure*—(1) *Application for transfer*. An Application for Transfer of QS/IFQ (Application for Transfer) must be approved by the Regional Administrator before a person may use IFQ to harvest IFQ halibut or IFQ sablefish, whether the IFQ was the result of a direct transfer or the result of a QS transfer. An Application for Transfer will not be approved until the Regional Administrator has reviewed and approved the transfer agreement signed by the parties to the transaction. The Regional Administrator shall provide an Application for Transfer form to

any person on request. Persons who submit an Application for Transfer to the Regional Administrator for approval will receive notification of the Regional Administrator's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer.

(2) *QS or IFQ accounts.* QS or IFQ accounts affected by an Application for Transfer approved by the Regional Administrator will change on the date of approval. Any necessary IFQ permits will be sent with the notification of the Regional Administrator's decision.

(c) *Application for Transfer approval criteria.* Except as provided in paragraph (f) of this section, an Application for Transfer will not be approved until the Regional Administrator has determined that:

(1) The person applying for transfer received the QS or IFQ to be transferred:

(i) By initial assignment by the Regional Administrator as provided in § 679.40(a); or

(ii) By approved transfer.

(2) The person applying to receive the QS or IFQ meets the requirements of eligibility in paragraph (d) of this section.

(3) The person applying for transfer and the person applying to receive the QS or IFQ have their notarized signatures on the Application for Transfer.

(4) There are no fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person.

(5) The person applying to receive the QS or IFQ currently exists.

(6) The transfer would not cause the person applying to receive the QS or IFQ to exceed the use limits in § 679.42 (e) or (f).

(7) The transfer would not violate the provisions of paragraph (g) of this section.

(8)(i) The person applying to make or receive the IFQ or QS transfer has paid all IFQ fees that have become due as a result of an initial administrative determination.

(ii) The person applying to make or receive the IFQ or QS transfer who has not paid all IFQ fees that are due (as provided under § 679.45(a)) has timely appealed the administrative determination that IFQ fees have not been paid in full and has submitted to NMFS an amount sufficient to satisfy any disputed liability pending a final agency action.

(9) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Administrator.

(d) *Eligibility to receive QS or IFQ by transfer*—(1) *Application for Eligibility.* All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility), containing accurate information, to the Regional Administrator. The Regional Administrator will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Administrator. The Regional Administrator shall provide an Application for Eligibility form to any person on request.

(2) *Type of eligibility.* A person must indicate on the Application for Eligibility whether the eligibility sought is as:

(i) An individual; or

(ii) A corporation, partnership, or other entity.

(3) *Application filing order.* A person may submit the Application for Eligibility with the Application for Transfer or file the Application for Eligibility prior to submitting the Application for Transfer. If a person, as described in paragraph (d)(2)(ii) of this section, files the Application for Eligibility prior to submitting the Application for Transfer, and that person's status subsequently changes, as described in § 679.42(j), that person must resubmit an Application for Eligibility before submitting, or with, the Application for Transfer.

(4) *Notification of approval.* Applicants will be notified by mail of the Regional Administrator's approval of an application for eligibility.

(5) *Notification of disapproval.* The Regional Administrator will notify the

applicant if an Application for Eligibility is disapproved. This notification of disapproval will include:

(i) The disapproved Application for Eligibility.

(ii) An explanation of why the Application for Eligibility was not approved.

(6) *Reasons for disapproval.* Reasons for disapproval of an Application for Eligibility may include, but are not limited to:

(i) Fewer than 150 days of experience working as an IFQ crewmember.

(ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of ''person'' at §679.2.

(iii) An incomplete Application for Eligibility.

(iv) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations.

(e) *Transfers of QS blocks*—(1) *General.* A QS block must be transferred as an undivided whole, unless the size of the QS block exceeds the use limits specified at §679.42. If the QS block to be transferred exceeds the use limits specified at §679.42, the Regional Administrator will divide the block into two blocks, one block containing the maximum amount of QS allowable under the QS use limits and the other block containing the residual QS.

(2) *Sablefish.* QS blocks for the same IFQ regulatory area and vessel category that represent less than 5,000 lb (2.3 mt) of sablefish IFQ, based on the 1996 TAC share for fixed gear sablefish in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 5,000 lbs (2.3 mt) of sablefish IFQ based on the preceding criteria. A consolidated block cannot be divided and is considered a single block for purposes of use and transferability. The maximum number of QS units that may be consolidated into a single QS block in each IFQ regulatory area is as follows:

(i) Southeast Outside district: 33,270 QS.

(ii) West Yakutat district: 43,390 QS.

(iii) Central Gulf area: 46,055 QS.

(iv) Western Gulf area: 48,410 QS.

(v) Aleutian Islands subarea: 99,210 QS.

(vi) Bering Sea subarea: 91,275 QS.

(3) *Halibut.* QS blocks for the same IFQ regulatory area and vessel category that represent less than 3,000 lbs (1.4 mt) of halibut IFQ, based on the 1996 catch limit for halibut in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 3,000 lbs (1.4 mt) of halibut IFQ based on the preceding criteria. A consolidated block cannot be divided and is considered a single block for purposes of use and transferability. The maximum number of QS units that may be consolidated into a single block in each IFQ regulatory area is as follows:

(i) Area 2C: 19,992 QS.

(ii) Area 3A: 27,912 QS.

(iii) Area 3B: 44,193 QS.

(iv) Subarea 4A: 22,947 QS.

(v) Subarea 4B: 15,087 QS.

(vi) Subarea 4C: 30,930 QS.

(vii) Subarea 4D: 26,082 QS.

(viii) Subarea 4E: 0 QS.

(f) *Transfer of QS or IFQ with restrictions.* If QS or IFQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS or IFQ by transfer does not meet all of the eligibility requirements of this section, the Regional Administrator will approve the Application for Transfer with restrictions. The Regional Administrator will not assign IFQ resulting from the restricted QS to any person. IFQ with restrictions may not be used for harvesting halibut or sablefish with fixed gear. The QS or IFQ will remain restricted until:

(1) The person who received the QS or IFQ with restrictions meets the eligibility requirements of this section and the Regional Administrator approves an Application for Eligibility for that person; or

(2) The Regional Administrator approves the Application for Transfer from the person who received the QS or IFQ with restrictions to a person who meets the requirements of this section.

(g) *Transfer restrictions.* (1) Except as provided in paragraph (f) or paragraph

(g)(2) of this section, only persons who are IFQ crew members or who were initially issued QS assigned to vessel categories B, C, or D, and meet the other requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

(2) Except as provided in paragraph (g)(3) of this section, only persons who are IFQ crew members, and meet the other requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it, in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish.

(3) Individuals who were initially issued QS assigned to vessel categories B, C, or D may transfer that QS to a corporation that is solely owned by the same individual. Such transfers of QS assigned to vessel categories B, C, or D in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish will be governed by the use provisions of § 679.42(i); the use provisions pertaining to corporations at § 679.42(j) shall not apply.

(4) The Regional Administrator will not approve an Application for Transfer of QS assigned to vessel categories B, C, or D subject to a lease or any other condition of repossession or resale by the person transferring QS, except as provided in paragraph (h) of this section, or by court order, operation of law, or as part of a security agreement. The Regional Administrator may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(h) *Transfer of IFQ*. (1) Pursuant to paragraph (a) of this section, an Application for Transfer must be approved by the Regional Administrator before a person may use any IFQ that results from a direct transfer to harvest halibut or sablefish. After approving the Application for Transfer, the Regional Administrator will change any IFQ accounts affected by the approved transfer and issue all necessary IFQ permits.

(2) (Applicable until January 2, 1998). A person may transfer no more than 10 percent of the total IFQ resulting from QS held by that person and assigned to vessel categories B, C, or D for any IFQ species in any IFQ regulatory area to one or more persons for any fishing year.

(i) *Transfer across catcher vessel categories*—(1) *CDQ compensation*. Persons issued CDQ compensation QS in a catcher vessel category, pursuant to § 679.41(j), and in an IFQ regulatory area in which they do not hold QS other than CDQ compensation QS, may use that CDQ compensation QS on any catcher vessel. This exemption from catcher vessel categories ends upon the first transfer of the CDQ compensation QS. CDQ compensation QS being transferred will be permanently assigned to a specific catcher vessel category as designated by the person receiving the transfer.

(2) *Redesignated catcher vessel category (Applicable until February 24, 1997)*. Catcher vessel QS transferred as partial or total consideration for the transfer of CDQ compensation QS may be redesignated into a new catcher vessel category if the CDQ compensation QS being transferred can be used on any catcher vessel pursuant to the exemption in paragraph (i)(1) of this section and the person to which that CDQ compensation QS was issued is party to the transfer.

(3) *CDQ compensation QS definition*. For purposes of this paragraph (i), CDQ compensation QS is QS issued as compensation for halibut and sablefish harvest privileges foregone due to the CDQ Program, as provided in paragraph (j) of this section.

(j) *Compensation for CDQ allocations*. (1) The Regional Administrator will compensate persons that receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, 3B, and 4A. This compensation of halibut QS from areas 2C, 3A, 3B, and 4A will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocation authorized by this section.

(2) The Regional Administrator will compensate persons that receive a reduced sablefish QS in any BSAI IFQ

regulatory area because of the sablefish CDQ program by taking sablefish QS from the IFQ regulatory areas of the GOA and allocating it in proportion to the loss suffered by persons in the BSAI area. Such additional compensation of sablefish QS will be allocated in proportion to the amount of sablefish QS foregone due to the CDQ allocation authorized by this section.

(3) Persons initially issued QS for IFQ regulatory areas in which a portion of the TAC is allocated to the CDQ Program will be compensated for halibut and sablefish harvest privileges foregone due to the CDQ Program. If a person does not hold QS in an IFQ regulatory area on the date the compensation is issued, that person's compensation will be issued as unblocked. If a person does hold QS in an IFQ regulatory area on the date compensation is issued, that person's compensation will be added to their existing QS in that IFQ regulatory area. The resulting QS amount will be blocked or unblocked according to the criteria found at § 679.40(a). Compensation will be calculated for each non-CDQ area using the following formula:

$$Q_N = (Q_C \times QSP_N \times RATE)/(SUM_{CDQ} - [RATE \times SUM_{TAC}])([1 - RATE] \times TAC_{AVE})(QSP_C \times [CDQ_{PCT} - RATE])$$

Where:

Q_N = quota share in non-CDQ area
Q_C = quota share in CDQ area
QSP_N = quota share pool in non-CDQ area (as existing on January 31, 1995)
RATE = SUM_{CDQ}/average of the TAC (1988–1994) for all CDQ and non-CDQ areas
TAC_{AVE} = average of the TAC (1988–1994) for CDQ area
QSP_C = quota share pool in CDQ area (as existing on January 31, 1995)
CDQ_{PCT} = CDQ percentage for CDQ area
SUM_{CDQ} = sum $[TAC_{AVE} \times CDQ_{PCT}]$
SUM_{TAC} = sum $[TAC_{AVE}]$

(k) *Transfer to the surviving spouse.* (1) On the death of an individual who holds QS or IFQ, the surviving spouse receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will that is probated. The Regional Administrator will approve an Application for Transfer to the surviving spouse when sufficient evidence has been provided to verify the death of the individual.

(2) The Regional Administrator will approve, for 3 calendar years following the date of death of an individual, an Application for Transfer of IFQ from the surviving spouse to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (g)(2) of this section.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33385, June 27, 1996; 61 FR 41526, Aug. 9, 1996; 61 FR 67964, Dec. 26, 1996; 63 FR 47368, Sept. 4, 1998; 65 FR 14942, Mar. 20, 2000]

§ 679.42 Limitations on use of QS and IFQ.

(a) *IFQ regulatory area and vessel category.* The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area. Except as provided in paragraph (k) of this section or in § 679.41(i)(1) of this part, the IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category. Notwithstanding § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the IFQ regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.3 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

(b) *Gear*—(1) *IFQ Fisheries.* Halibut IFQ must be used only to harvest halibut with fishing gear authorized in § 679.2. Sablefish fixed gear IFQ must not be used to harvest sablefish with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area of the GOA.

(2) *Seabird avoidance gear and methods.* The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

(c) *Requirements and deductions.* (1) Any individual who harvests halibut or sablefish with fixed gear must:

(i) Have a valid IFQ card.

(ii) Be aboard the vessel at all times during the fishing operation.

(iii) Sign any required fish ticket.

(iv) Sign the IFQ landing report required by §§ 679.5(l)(2)(ii)(C) and (iii)(B).

(2) The scale weight of the halibut or sablefish product actually measured at the time of landing, required by § 679.5(l)(2)(vi) to be included in the IFQ landing report, shall be the only source of information used by NMFS to debit an IFQ account. An IFQ account will be debited as indicated in Table 3 to this part.

(d) *Emergency waiver.* The requirement of paragraph (c) of this section for an individual IFQ card holder to be aboard the vessel during fishing operations and to sign the IFQ landing report may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall apply only to IFQ halibut or IFQ sablefish retained on the fishing trip during which such emergency occurred.

(e) *Sablefish QS use.* (1) No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish QS for the GOA and BSAI IFQ regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(f) *Halibut QS use.* Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(1) *IFQ regulatory area 2C.* 599,799 units of halibut QS.

(2) *IFQ regulatory areas 2C, 3A, and 3B.* 1,502,823 units of halibut QS.

(3) *IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E.* 495,044 units of halibut QS.

(g) *Limitations on QS blocks*—(1) *Number of blocks per species.* (i) Except as provided in paragraph (g)(1)(ii) of this section, no person, individually or collectively, may hold more than two blocks for each species in any IFQ regulatory area.

(ii) If that person, individually or collectively, holds unblocked QS for a species in an IFQ regulatory area, such person may only hold one QS block for that species in that IFQ regulatory area.

(2) *Holding or to hold blocks of QS.* For purposes of this section, ''holding'' or ''to hold'' blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

(h) *Vessel limitations*—(1) *Halibut.* (i) Except as provided in paragraph (h)(1)(ii) of this section, no vessel may be used, during any fishing year, to harvest more than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E.

(ii) In IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent of the halibut catch limit for this area.

(2) *Sablefish.* (i) Except as provided in paragraph (h)(2)(ii) of this section, no vessel may be used, during any fishing year, to harvest more than 1 percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas.

(ii) In the IFQ regulatory area east of 140° W. long., no vessel may be used to harvest more than 1 percent of the fixed gear TAC of sablefish for this area.

(3) *Excess.* A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel. However, two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

(i) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by individuals.* In addition to the requirements of paragraph (c) of this section, IFQ cards issued for IFQ resulting from QS assigned to vessel categories B, C, or D must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who received an initial allocation of QS assigned to categories B, C, or D does not have to be aboard the vessel on which his or her

IFQ is being fished or to sign IFQ landing reports if that individual owns at least a 20–percent interest in the vessel and is represented on the vessel by a master employed by that individual. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This minimum 20–percent ownership requirement does not apply to any individual who received an initial allocation of QS assigned to categories B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.

(2) The exemption provided in paragraph (i)(1) of this section does not apply to individuals who receive an initial allocation of QS assigned to vessel categories B, C, or D for halibut in IFQ regulatory area 2C or for sablefish QS in the IFQ regulatory area east of 140° W. long., and this exemption is not transferrable.

(j) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by corporations and partnerships.* Except as provided in paragraph (j)(5) of this section, a corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided that the corporation or partnership owns at least a 20– percent interest in the vessel on which its IFQ is fished, and that it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This provision is not transferrable and does not apply to QS assigned to vessel categories B, C, or D for halibut in IFQ regulatory area 2C or for sablefish in the IFQ regulatory area east of 140° W. long. that is transferred to a corporation or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to § 679.41(c) of this part and be used pursuant to paragraphs (c) and (i) of this section.

(1) A corporation or partnership, except for a publicly-held corporation, that receives an initial allocation of QS assigned to vessel categories B, C, or D loses the exemption provided under paragraph (j) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(2) For purposes of this paragraph (j), ''a change in the corporation or partnership'' means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

(3) The Regional Administrator must be notified of a change in a corporation or partnership as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership.

(4) QS assigned to vessel categories B, C, or D and IFQ resulting from that QS held in the name of a corporation or partnership that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in § 679.41 of this part, before it may be used at any time after the effective date of the change.

(5) A corporation or a partnership that received an initial allocation of QS assigned to categories B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

(k) *Processing of fish other than IFQ halibut and IFQ sablefish.* Fish other

than IFQ halibut or IFQ sablefish may be processed on a vessel on which persons:

(1) Are authorized to harvest IFQ halibut or IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel category A; or

(2) Are authorized to harvest IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel categories B or C unless any person aboard the vessel is authorized to harvest IFQ halibut based on allocations of IFQ resulting from QS assigned to vessel categories B, C, or D.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33385, June 27, 1996; 61 FR 43314, Aug. 22, 1996; 62 FR 7948, Feb. 21, 1997; 62 FR 19690, Apr. 23, 1997; 62 FR 60669, Nov. 12, 1997; 62 FR 66311, Dec. 18, 1997; 63 FR 11167, Mar. 6, 1998; 63 FR 47368, Sept. 4, 1998; 63 FR 54611, Oct. 13, 1998; 64 FR 24962, May 10, 1999; 64 FR 61982, Nov. 15, 1999]

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under this subpart as well as § 679.4(c), § 679.4(g), and portions of subpart C of this part that apply to the halibut and sablefish CDQ program.

(b) *Who may appeal.* Any person whose interest is directly and adversely affected by an initial administrative determination may file a written appeal. For purposes of this section, such persons will be referred to as ''applicant'' or ''appellant.''

(c) *Submission of appeals.* Appeals must be in writing and must be submitted in original form to the Regional Administrator. Contact the Regional Administrator for appeals address. Appeals transmitted by electronic means will not be accepted.

(d) *Timing of appeals.* (1) If an applicant appeals an initial administrative determination, the appeal must be filed not later than 60 days after the date the determination is issued.

(2) The time period within which an appeal may be filed begins to run on the date the initial administrative determination is issued. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(e) *Address of record.* NMFS will establish as the address of record the address used by the applicant in initial correspondence to Chief, RAM Division, after the application period has begun. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(f) *Statement of reasons for appeals.* Applicants must timely submit a full written statement in support of the appeal, including a concise statement of the reasons the initial administrative determination has a direct and adverse effect on the applicant and should be reversed or modified. If the applicant requests a hearing on any issue presented in the appeal, such request for hearing must be accompanied by a concise written statement raising genuine and substantial issues of adjudicative fact for resolution and a list of available and specifically identified reliable evidence upon which the factual issues can be resolved. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(g) *Hearings.* The appellate officer will review the applicant's appeal and request for hearing, and has discretion to proceed as follows:

(1) Deny the appeal;

(2) Issue a decision on the merits of the appeal, if the record contains sufficient information on which to reach final judgment; or

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following:

(i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law.

(ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions.

(iii) The evidence described in the request for hearing, if established at hearing, would be adequate to justify resolution of the factual issue in the way sought by the applicant. A hearing will not be ordered if the evidence described is insufficient to justify the factual determination sought, even if accurate.

(iv) Resolution of the factual issue in the way sought by the applicant is adequate to justify the action requested. A hearing will not be ordered on factual issues that are not determinative with respect to the action requested.

(h) *Types of hearings.* If the appellate officer determines that a hearing should be held to resolve one or more genuine and substantial issues of adjudicative fact, he/she may order:

(1) A written hearing, as provided in paragraph (m) of this section; or

(2) An oral hearing, as provided in paragraph (n) of this section.

(i) *Authority of the appellate officer.* The appellate officer is vested with general authority to conduct all hearings in an orderly manner, including the authority to:

(1) Administer oaths.

(2) Call and question witnesses.

(3) Issue a written decision based on the record.

(j) *Evidence.* All evidence that is relevant, material, reliable, and probative may be included in the record. Formal rules of evidence do not apply to hearings conducted under this section.

(k) *Appellate officers' decisions.* The appellate officer will close the record and issue a decision after determining there is sufficient information to render a decision on the record of the proceedings and that all procedural requirements have been met. The decision must be based solely on the record of the proceedings. Except as provided in paragraph (o) of this section, an appellate officer's decision takes effect 30 days after it is issued and, upon taking effect, is the final agency action for purposes of judicial review.

(l) *Disqualification of an appellate officer.* (1) The appellate officer will withdraw from an appeal at any time he/she deems himself/herself disqualified.

(2) The appellate officer may withdraw from an appeal on an appellant's motion if:

(i) The motion is entered prior to the appellate officer's issuance of a decision; and

(ii) The appellant demonstrates that the appellate officer has a personal bias or any other basis for disqualification.

(3) If the appellate officer denies a motion to withdraw, he/she will so rule on the record.

(m) *Written hearing.* (1) An appellate officer may order a written hearing under paragraph (h)(1) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can be resolved by allowing the appellant to present written materials to support his/her position.

(2) After ordering a written hearing, the appellate officer will:

(i) Provide the appellant with notification that a written hearing has been ordered.

(ii) Provide the appellant with a statement of issues to be determined at hearing.

(iii) Provide the appellant with 30 days to file a written response. The appellant may also provide documentary evidence to support his/her position. The period to file a written response may be extended at the sole discretion of the appellate officer, if the appellant shows good cause for the extension.

(3) The appellate officer may, after reviewing the appellant's written response and documentary evidence:

(i) Order that an oral hearing be held, as provided in paragraph (h)(2) of this section, to resolve issues that cannot be resolved through the written hearing process;

(ii) Request supplementary evidence from the appellant before closing the record; or

(iii) Close the record.

(4) The appellate officer will close the record and issue a decision after determining that the information on the record is sufficient to render a decision.

(n) *Oral hearing.* (1) The appellate officer may order an oral hearing under paragraphs (h)(2) and (m)(3)(i) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can best be resolved through the oral hearing process.

(2) After ordering an oral hearing, the appellate officer will:

(i) Provide the appellant with notification that an oral hearing has been ordered.

(ii) Provide the appellant with a statement of issues to be determined at hearing.

(iii) Provide the appellant with notification, at least 30 days in advance, of the place, date, and time of the oral hearing. Oral hearings will be held in Juneau, AK, at the prescribed date and time, unless the appellate officer determines, based upon good cause shown, that a different place, date, or time will better serve the interests of justice. A continuance of the oral hearing may be ordered at the sole discretion of the appellate officer if the appellant shows good cause for the continuance.

(3) The appellate officer may, either at his/her own discretion or on the motion of the appellant, order a pre-hearing conference, either in person or telephonically, to consider:

(i) The simplification of issues.

(ii) The possibility of obtaining stipulations, admissions of facts, and agreements to the introduction of documents.

(iii) The possibility of settlement or other means to facilitate resolution of the case.

(iv) Such other matters as may aid in the disposition of the proceedings.

(4) The appellate officer must provide the appellant with notification of a pre-hearing conference, if one is ordered, at least 30 days in advance of the conference. All action taken at the pre-hearing conference will be made part of the record.

(5) At the beginning of the oral hearing, the appellate officer may first seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he/she may wish to have evidence presented. Issues to be resolved at the hearing will be limited to those identified by the appellate officer as provided in paragraph (g)(3) of this section. The appellant will then be given an opportunity to present his/her case.

(6) During the oral hearing, the appellant has the right to present reliable and material oral or documentary evidence and to conduct such cross-examination as may be required in the interests of justice.

(7) After the conclusion of the oral hearing, the appellant may be given time by the appellate officer to submit any supplementary information that may assist in the resolution of the case.

(8) The appellate officer will close the record and issue a decision after determining that the information on the record is sufficient to render a decision.

(o) *Review by the Regional Administrator.* An appellate officer's decision is subject to review by the Regional Administrator, as provided in this paragraph (o).

(1) The Regional Administrator may affirm, reverse, modify, or remand the appellate officer's decision before the 30-day effective date of the decision provided in paragraph (k) of this section.

(2) The Regional Administrator may take any of these actions on or after the 30-day effective date by issuing a stay of the decision before the 30-day effective date. An action taken under paragraph (o)(1) of this section takes effect immediately.

(3) The Regional Administrator must provide a written explanation why an appellate officer's decision has been reversed, modified, or remanded.

(4) The Regional Administrator must promptly notify the appellant(s) of any action taken under this paragraph (o).

(5) The Regional Administrator's decision to affirm, reverse, or modify an appellate officer's decision is a final agency action for purposes of judicial review.

(p) *Issuance of a non-transferable license.* A non-transferable license will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license for license limitation groundfish or crab species under § 679.4(k). This non-transferable license authorizes a person to conduct directed

fishing for groundfish or directed fishing for crab species and will have specific endorsements and designations based on the person's claims in his or her application for a license. This nontransferable license expires upon the resolution of the appeal.

[61 FR 31230, June 19, 1996, as amended at 62 FR 17753, Apr. 11, 1997; 63 FR 52657, Oct. 1, 1998; 63 FR 64879, Nov. 24, 1998]

§ 679.44 Penalties.

Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Act or Halibut Act, or any regulation issued under the Magnuson-Stevens Act or Halibut Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson-Stevens Act or Halibut Act, to part 600 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to permanent or temporary sanctions to QS and associated IFQ.

§ 679.45 IFQ cost recovery program.

(a) *Cost recovery fees*—(1) *Responsibility*. The person documented on the IFQ permit as the permit holder at the time of an IFQ landing must comply with the requirements of this section. Subsequent transfer of QS or IFQ does not affect the permit holder's liability for noncompliance with this section.

(2) *IFQ Fee Liability Determination*. After each IFQ fishing year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ pounds landed during that IFQ fishing year for each permit as part of the IFQ Landing and Estimated Fee Liability page described at §679.5(l)(7)(ii)(C)(*2*). The summary will include an estimated IFQ fee liability based on the standard ex-vessel values of the landings. The summary and estimated fee liability will include details of IFQ equivalent pounds landed by permit, port or port-group, species, date, and IFQ standard prices. The permit holder must either accept NMFS's estimate of IFQ liability or revise NMFS's estimate of IFQ fee liability using the Fee Submission Form described at §679.5(l)(7)(ii). If the permit holder revises NMFS's estimate of his or her fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the permit holder fails to provide adequate documentation by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's fee liability based on standard ex-vessel values.

(3) *Fee Collection*. An IFQ permit holder with an IFQ landing is responsible for self-collecting his or her own fee during the calendar year in which the IFQ fish is harvested.

(4) *Payment*—(i) *Payment due date*. An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided in this section at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ landings were made.

(ii) *Payment recipient*. Make payment payable to NMFS.

(iii) *Payment address*. Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668, Facsimile: (907) 586–7354.

(iv) *Payment method*. Payment must be made by personal check drawn on a U.S. bank account, money order, or bank certified check.

(b) *IFQ ex-vessel value determination and use*—(1) *General*. An IFQ permit holder must use either the IFQ standard ex-vessel value or the IFQ actual ex-vessel value when determining the IFQ fee liability based on ex-vessel value. An IFQ permit holder must base all fee liability calculations on the ex-vessel value that correlates to landed IFQ fish that is recorded in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value*. An IFQ permit holder that uses actual ex-vessel value, as defined in §679.2, to determine IFQ fee liability must document actual ex-vessel value for each IFQ permit.

(c) *IFQ standard ex-vessel value determination and use*—(1) *Use of standard price*. An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability as part of a revised IFQ fee liability submission must use the corresponding standard price(s) as published in the FEDERAL REGISTER.

(2) *Duty to publish list*—(i) *General.* Each year the Regional Administrator will publish IFQ standard prices in the FEDERAL REGISTER during the last quarter of each calendar year. The standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(ii) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the FEDERAL REGISTER based upon new information of the type set forth in this section. IFQ standard prices published in the FEDERAL REGISTER by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(iii) *Determination.* NMFS will calculate the IFQ standard prices to reflect, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Buyer Reports as described in §679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed pounds by IFQ species, port-group, and month;

(B) Total ex-vessel value by IFQ species, port-group, and month; and

(C) Price adjustments, including IFQ retro-payments.

(d) *IFQ fee percentage.*—(1) *Default percentage.* The IFQ fee percentage is 3 percent (0.03) unless adjusted by the Regional Administrator by publication in the FEDERAL REGISTER in accordance with §679.45(d)(3).

(2) *Calculating fee percentage value.* Each year the Regional Administrator will calculate the fee percentage.

(i) *Factors.* In making the calculations the Regional Administrator will consider the following factors:

(A) The catch to which the IFQ fee will apply;

(B) The projected ex-vessel value of that catch;

(C) The costs directly related to the management and enforcement of the IFQ program;

(D) The funds available for the IFQ program in the Limited Access System Administrative Fund (LASAF); and

(E) Nonpayment of fee liabilities.

(ii) *Methodology.* In making the calculation, the Regional Administrator will use the methodology described here.

[100 x (DPC - AB) / V] / (1 -NPR) where:

DPC is the direct program costs for the IFQ fishery for the previous fiscal year,

AB is the projected end of the year LASAF account balance for the IFQ program,

V is the projected ex-vessel value of the catch subject to the IFQ fee for the current year, and

NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments.* (i) *General.* During or before the last quarter of each year, the Regional Administrator will consider adjusting the IFQ fee percentage. Consideration will be based on the calculations described in §679.45(d)(2). The Regional Administrator may reduce the IFQ fee percentage at any time based on new information of the type set forth in §679.45(d)(2).

(ii) *In-season effective period.* An in-season reduction in the IFQ fee percentage supersedes the IFQ fee percentage previously in effect for the calendar year and remains in effect through the end of the calendar year in which it was determined unless otherwise adjusted by the Regional Administrator.

(4) *Publication.* The Regional Administrator will publish notification in the FEDERAL REGISTER any adjustment of the IFQ fee percentage.

(5) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ landing is made to calculate his or her fee liability for such landed IFQ pounds unless the percentage is subsequently adjusted as described in §679.45(d)(3). The IFQ permit holder must use the IFQ percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* If an IFQ permit holder does not submit a complete Fee Submission Form and corresponding payment by the due date described in §679.45(a)(2) and (3), the Regional Administrator may:

(1) At any time thereafter send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to §679.45(a)(2) is the amount of IFQ fee due from the IFQ permit holder.

(2) Disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with §679.41(c)(8)(i). Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid a sufficient amount, the Regional Administrator may disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with §679.41(c)(4). The Regional Administrator will notify the IFQ permit holder by letter that an insufficient amount has been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount. The Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value.

(2) After expiration of the 30-day period, the Regional Administrator will issue an IAD and notify the IFQ permit holder. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal pursuant to §679.43. In an appeal of an IAD made under this section, the IAD permit holder has the burden of proving his or her claim.

(3) If the permit holder fails to file an appeal of the IAD pursuant to §679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action. Once a fee liability determination becomes final, any IFQ fishing permit held by the IFQ permit holder will be deemed not valid until all IFQ fee liabilities have been paid. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(g) *Over payment.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the IFQ fee liability determined to be due by the final agency action will be returned to the IFQ permit holder unless the permit holder requests the agency to credit the excess amount against the IFQ permit holder's future IFQ fee liability.

(h) *Appeals and requests for reconsideration.* An IFQ permit holder who receives an IAD may either appeal the IAD pursuant to §679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake a reconsideration of the IAD on his or

her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates a reconsideration, the 60-day period for appeal under § 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an IFQ permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an IFQ permit holder has the burden of proving his or her claim.

(i) *Annual report.* NMFS will publish annually a report describing the status of the IFQ Cost Recovery Program.

[65 FR 14924, Mar. 20, 2000]

Subpart E—Groundfish Observer Program

SOURCE: 61 FR 56431, Nov. 1, 1996, unless otherwise noted.

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel subject to this part or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance. Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(4) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in this section.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to allow observers to collect Alaska fisheries data deemed by the Regional Administrator to be necessary and appropriate for management, compliance monitoring, and research of groundfish fisheries and for the conservation of marine resources or their environment.

(c) *Observer requirements for vessels.* (1) Observer coverage is required as follows:

(i) A mothership of any length that processes 1,000 mt or more in round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) A mothership of any length that processes from 500 mt to 1,000 mt in round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(iii) Each mothership that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on September 1 under § 679.23(e)(2) is required to have a second observer aboard, in addition to the observer required under paragraphs (c)(1) (i) and (ii) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(iv) A catcher/processor or catcher vessel 125 ft (38.1 m) LOA or longer must carry an observer during 100 percent of its fishing days except for a vessel fishing for groundfish with pot gear as provided in paragraph (c)(1)(vii) of this section.

(v) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(vi) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (c)(1)(v) of this section must carry an observer during at least one entire fishing trip using hook-and-line gear in the Eastern Regulatory

Area of the GOA during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area using hook-and-line gear.

(vii) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days while using pot gear in that calendar quarter and during at least one entire fishing trip using pot gear in a calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(viii) *Red King Crab Savings Area.* (A) Any catcher/processor or catcher vessel used to fish for groundfish in the Red King Crab Savings area must carry an observer during 100 percent of its fishing days in which the vessel uses pelagic trawl gear, pot, jig, or longline gear.

(B) Any catcher/processor or catcher vessel used to fish for groundfish in the Red King Crab Savings Subarea and subject to this subarea being open to vessels fishing for groundfish with non-pelagic trawl gear under § 679.21(e)(3)(ii)(B), must carry an observer during 100 percent of its fishing days in which the vessel uses non-pelagic trawl gear.

(ix) *Nearshore Bristol Bay Trawl Closure.* Any catcher/processor or catcher vessel used to fish for groundfish in the Nearshore Bristol Bay Trawl Closure area must carry an observer during 100 percent of its fishing days in which the vessel uses trawl gear.

(2) *Groundfish fishery categories requiring separate coverage.* Directed fishing for groundfish, during any fishing trip, that results:

(i) *Pollock fishery*. In a retained catch of pollock that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(ii) *Pacific cod fishery*. In a retained catch of Pacific cod that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iii) *Sablefish fishery*. In a retained catch of sablefish that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iv) *Rockfish fishery*. In a retained aggregate catch of rockfish that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(v) *Flatfish fishery*. In a retained aggregate catch of all flatfish species, except Pacific halibut, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(vi) *Other species fishery*. In a retained catch of groundfish that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (c)(2) (i) through (v) of this section.

(3) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch of groundfish species or species groups for which a TAC has been specified under § 679.20, in round-weight equivalent, will determine to which fishery category listed under paragraph (c)(2) of this section the vessel is assigned.

(i) *Catcher/processors.* A catcher/processor will be assigned to a fishery category based on the retained groundfish catch composition reported on the vessel's weekly production report submitted to the Regional Administrator under § 679.5(i).

(ii) *Catcher vessel delivery in Federal waters.* A catcher vessel that delivers to a mothership in Federal waters will be assigned to a fishery category based on the retained groundfish catch composition reported on the weekly production report submitted to the Regional Administrator for that week by the mothership under § 679.5(i).

(iii) *Catcher vessel delivery in Alaska State waters.* A catcher vessel that delivers groundfish to a shoreside processor or to a mothership processor vessel in Alaska State waters will be assigned to a fishery category based on

the retained groundfish catch composition reported on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(4) *Groundfish and halibut CDQ fisheries.* The owner or operator of a vessel groundfish CDQ fishing or halibut CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24–hour period, and, the CDQ observer is required to sample no more than 9 hours in each 24–hour period.

(i) *Motherships or catcher/processors using trawl gear.* A mothership or catcher/processor using trawl gear must have at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

(ii) *Catcher/processors using hook-and-line gear.* A catcher/processor using hook-and-line gear must have at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessels, unless NMFS approves a CDP authorizing the vessel to carry only one lead CDQ observer. At least one of the CDQ observers must be certified as a lead CDQ observer. NMFS may approve a CDP authorizing the vessel to carry only one lead CDQ observer if the CDQ group supplies vessel logbook or observer data that demonstrates that one CDQ observer can sample each CDQ set for species composition in one 12–hour shift per fishing day. NMFS will not approve a CDP that would require the observer to divide a 12–hour shift into shifts of less than 6 hours.

(iii) *Catcher/processors using pot gear.* A catcher/processor using pot gear must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section aboard the vessel.

(iv) *Catcher vessel.* A catcher vessel equal to or greater than 60 ft (18.3 m), except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section aboard the vessel.

(d) *Observer requirements for shoreside processors.* Observer coverage is required as follows. A shoreside processor that:

(1) Processes 1,000 mt or more in round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility each day it receives or processes groundfish during that month.

(2) Processes 500 mt to 1,000 mt in round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) Offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on September 1, under § 679.23(e)(2), is required to have an observer, in addition to the observer required under paragraphs (d) (1) and (2) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(4) *Groundfish and halibut CDQ fisheries.* Each shoreside processor required to have a Federal processor permit under § 679.4(f) and taking deliveries of CDQ or PSQ from vessels groundfish CDQ fishing as defined at § 679.2 or taking deliveries from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section present at all times while CDQ is being received or processed. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24–hour period, and the CDQ observer is required to sample no more than 9 hours in each 24–hour period.

(e) *Inseason adjustments in observer coverage requirements.* (1) The Regional Administrator may adjust the observer coverage requirements set out under paragraphs (c) and (d) of this section at any time to improve the accuracy, reliability, and availability of observer data, so long as the changes are based on one or more of the following:

(i) A finding that fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component have changed significantly, or are likely to change significantly.

(ii) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(2) *Procedure.* Observer coverage requirements may be adjusted in accordance with § 679.25(c). NMFS must publish changes in observer coverage requirements in the FEDERAL REGISTER, with the reasons for the changes and any special instructions to vessels or shoreside processors required to carry observers, at least 10 calendar days prior to their effective date.

(f) *Responsibilities*—(1) *Vessel responsibilities.* An operator of a vessel required to carry one or more observers must:

(i) *Accommodations and food.* Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deckbosses or other management level personnel of the vessel.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have on board:

(*1*) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I;

(*2*) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(*3*) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) *Observer use of equipment.* Allowing observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) *Communication equipment requirements*—(*1*) *Hardware and software.* Providing for use by the observer a personal computer in working condition that contains a full 486DX 66Mhz or greater capacity processing chip, at least 16 megabytes of RAM, at least 75 megabytes of free hard disk storage, DOS version 6.0 or a successor version of the DOS operating system, Windows 3.1, 3.11, or Windows95 (or equivalent and compatible software approved by NMFS), a mouse, and a 3.5-inch floppy disk drive. The computer equipment specified in this paragraph (B) must be connected to either an INMARSAT Standard C unit capable of transmitting binary files or a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Those processors that use other than an INMARSAT Standard C unit must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(*2*) *NMFS-supplied Software.* Ensuring that each mothership that is required to have a second observer aboard under paragraph (c)(iii) of this section, obtains the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communication equipment that is on motherships as specified at paragraph (f)(1)(iii)(B) of this section, and that is used by observers to enter and transmit data, is fully functional and operational.

(iv) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(vii) *Records.* Allow observers to inspect and copy the vessel's DFL, DCPL, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(viii) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observers with a safe work area adjacent to the sample collection site.

(C) Collecting bycatch when requested by the observers.

(D) Collecting and carrying baskets of fish when requested by observers.

(E) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(ix) *Transfer at sea.* (A) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(2) *Shoreside processor responsibilities.* A manager of a shoreside processor must do the following:

(i) *Safe conditions.* Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(ii) *Operations information.* Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish prior to receipt of those fish.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) *Observer use of equipment.* Allowing observers to use the shoreside processor's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) *Communication equipment requirements—(1) Hardware and software.* Making available for use by the observer a personal computer in working condition that contains a full 486DX 66Mhz or greater capacity processing chip, at least 16 megabytes of RAM, at least 75 megabytes of free hard disk storage, DOS version 6.0 or a successor version of the DOS operating system, Windows 3.1, 3.11, or Windows95 (or equivalent and compatible software approved by NMFS), at least a 28.8kbs Hayes-compatible modem, a mouse, and a 3.5-inch floppy disk drive. The computer equipment specified in this paragraph (B) must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(*2*) *NMFS-supplied software.* Ensuring that each shoreside processor that is required to have an additional observer under paragraph (d)(3) of this section, obtains the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communication equipment that is in the shoreside processor as specified at paragraph (f)(2)(iii)(B) of this section and that is used by observers to transmit data is fully functional and operational.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(v) *Document access.* Allow observers to inspect and copy the shoreside processor's DCPL, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(vi) *Assistance.* Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Cooperating with product recovery tests.

(C) Providing a secure place to store baskets of sampling gear.

(g) *Procurement of observer services.* Owners of vessels or shoreside processors required to carry observers under paragraphs (c) and (d) of this section must arrange for observer services from an observer contractor or contractors. A list of observer contractors is available upon request from the Observer Program Office.

(h) *Certification and decertification of observers*—(1) *Certification of observers*—(i) *Requirements.* NMFS will certify individuals who:

(A) Meet education and/or experience standards available from the Observer Program Office.

(B) Have successfully completed a NMFS-approved observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(C) Have not been suspended or decertified under paragraph (j) of this section.

(D) For purposes of the groundfish CDQ fisheries, a NMFS-certified CDQ observer must meet the following requirements.

(*1*) Be a prior observer in the groundfish fisheries off Alaska who has completed at least 60 days of observer data collection.

(*2*) Receive the rating of 1 for ''meets expectations'' or 2 for ''exceptional'' by NMFS for his or her most recent deployment.

(*3*) Successfully complete a NMFS-approved CDQ observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(*4*) Comply with all of the other requirements of this section.

(E) In addition to the requirements in paragraph (h)(1)(i)(D) of this section, to be certified as a ''lead CDQ observer'', an observer must meet the following requirements.

(*1*) A ''lead CDQ observer'' on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or a mothership.

(*2*) A ''lead CDQ observer'' on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(*3*) A ''lead CDQ observer'' on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

(*4*) A ''lead CDQ observer'' in a shoreside processing plant must have observed at least 30 days in a shoreside processing plant.

(ii) *Term.* An observer's certification expires upon completion of a deployment. Observers can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Standards of observer conduct*—(i) *Conflict of interest.*

(A) Observers:

(*1*) May not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the

products of the fishery, concerns selling supplies or services to these vessels or shoreside facilities, or concerns purchasing raw or processed products from these vessels or shoreside facilities.

(*2*) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel or at any shoreside facility owned or operated by a person who previously employed the observers.

(*4*) May not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor in a North Pacific fishery while under contract with an observer contractor.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest under this paragraph (h)(2).

(ii) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must diligently perform their assigned duties.

(B) Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violations of regulations relevant to conservation of marine resources or their environment that are observed.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Engaging in excessive drinking of alcoholic beverages;

(*2*) Engaging in the use or distribution of illegal drugs; or

(*3*) Becoming physically or emotionally involved with vessel or processing facility personnel.

(i) *Certification and decertification of observer contractors*—(1) *Certification of observer contractors*—(i) *Application.* An applicant seeking to become an observer contractor must submit an application to the Regional Administrator describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements and methods to be used. Observer contractors who were certified prior to January 1, 1999, and who have provided observer services during 1998 are exempt from this requirement to submit an application and are certified for the term specified in paragraph (i)(1)(iii) of this section.

(ii) *Selection.* The Regional Administrator may select one or more observer contractors based on the information submitted by applicants under paragraph (i)(1)(i) of this section and on other selection criteria that are available from the Observer Program Office.

(iii) *Term.* Observer contractors will be certified through December 31, 2000. NMFS can decertify or suspend observer contractors pursuant to paragraph (j) of this section.

(2) *Responsibilities and duties of observer contractors* include but are not limited to the following:

(i) Recruiting, evaluating, and hiring qualified candidates to serve as observers, including minorities and women.

(ii) Ensuring that only observers provide observer services.

(iii) Providing observers as requested by vessels and processors to fulfill requirements under paragraphs (c) and (d) of this section.

(iv) Providing observers' salary, benefits and personnel services in a timely manner.

(v) Providing all logistics to place and maintain the observers aboard the fishing vessels or at the site of the processing facility. This includes all travel arrangements, lodging and per diem, and any other services required to place observers aboard vessels or at processing facilities. Unless alternative

arrangements are approved by the Observer Program Office:

(A) Observers must not be deployed on the same vessel or at the same shoreside processor for more than 90 days in a 12-month period.

(B) A deployment cannot exceed 90 days.

(C) A deployment cannot include assignments to more than four vessels and/or shoreside processors.

(vi) Supplying alternate observers or prospective observers if one or more observers or prospective observers are not approved by NMFS, fail to successfully complete observer training or briefing, are injured and must be replaced, or resign prior to completion of duties.

(vii) Maintaining communications with observers at sea and shoreside facilities. Each observer contractor must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers, or problems concerning observer logistics, whenever observers are at sea, stationed at shoreside facilities, in transit, or in port awaiting boarding.

(viii) In cooperation with vessel or processing facility owners, ensuring that all observers' in-season catch messages and other required transmissions between observers and NMFS are delivered to NMFS within a time specified by the Regional Administrator.

(ix) Ensuring that observers complete mid-deployment data reviews when required.

(x) Ensuring that observers complete debriefing as soon as possible after the completion of their deployment and at locations specified by the Regional Administrator.

(xi) Ensuring all data, reports, and biological samples from observer deployments are complete and submitted to NMFS at the time of the debriefing interview.

(xii) Ensuring that all sampling and safety gear are returned to the Observer Program Office and that any gear and equipment lost or damaged by observers is replaced according to NMFS requirements.

(xiii) Monitoring observers' performance to ensure satisfactory execution of duties by observers and observer conformance with NMFS' standards of observer conduct under paragraph (h)(2) of this section.

(xiv) Providing the following information to the Observer Program Office by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) Observer training registration consisting of a list of individuals to be hired upon approval by NMFS and a copy of each person's academic transcripts, resume, and application for observer employment. The list must include the person's name and sex. The person's social security number is requested. Observer briefing registration consisting of a list of the observer's name, requested briefing class date, and briefing location. If the Observer Program Office has excused an observer from attending a briefing, the briefing registration must also include the names of observers excused from briefing, the date the observer was excused, and the name of the NMFS staff person granting the excuse. This information must be submitted to the Observer Program Office at least 5 working days prior to the beginning of a scheduled observer certification training or briefing session.

(B) Projected observer assignments that include the observer's name; vessel or shoreside processor assignment, type, and code; port of embarkation; target species; and area of fishing. This information must be submitted to the Observer Program Office prior to the completion of the training or briefing session.

(C) Observer deployment/logistics reports that include the observer's name, cruise number, current vessel or shoreside processor assignment and code, embarkation date, and estimated and actual disembarkation dates. This information must be submitted weekly as directed by the Observer Program Office.

(D) Observer debriefing registration that includes the observer's name, cruise number, vessel or shoreside processor name(s), and requested debriefing date.

(E) Copies of ''certificates of insurance'' that name the NMFS Observer Program Task Leader as a ''certificate holder''. The certificates of insurance

shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or cancelled:

(*1*) Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*2*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*3*) States Workers' Compensation as required.

(*4*) Commercial General Liability.

(F) Notification that, based upon a physical examination during the 12 months prior to an observer's deployment, an examining physician has certified that an observer does not have any health problems or conditions that would jeopardize the observer's safety or the safety of others while deployed, or prevent the observer from performing his or her duties satisfactorily, and that prior to examination, the certifying physician was made aware of the dangerous, remote and rigorous nature of the work. This information, including the date of the physical examination, must be submitted prior to the completion of the training or briefing session.

(G) A completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) an observer contractor has with those entities requiring observer services under paragraphs (c) and (d) of this section and with observers. Completed and unaltered copies of signed and valid contracts with specific entities requiring observer services or with specific observers must be submitted to the Observer Program Office upon request. Types of signed and valid contracts include the contracts an observer contractor has with:

(*1*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(i) and (iv) of this section,

(*2*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(ii), (v), and (vii) of this section,

(*3*) Shoreside processors required to have observer coverage as specified at paragraph (d)(1)(i) of this section,

(*4*) Shoreside processors required to have observer coverage as specified at paragraph (d)(1)(ii) of this section,

(*5*) Observers (to include contracts for the various compensation or salary levels of observers, the levels being based on observer experience).

(*6*) Required copies of contracts must be submitted by mail or faxed to: NMFS Observer Program Office, 7600 Sandpoint Way Northeast, Seattle, WA 98115–0070; fax number 206–526–4066.

(H) Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems must be submitted within 24 hours after the observer contractor becomes aware of the problem.

(3) *Conflict of interest.* Observer contractors:

(i) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to these vessels or shoreside facilities, or concerns purchasing raw or processed products from these vessels or shoreside facilities.

(ii) Must assign observers without regard to any preference by representatives of vessels and shoreside facilities based on observer race, gender, age, religion, or sexual orientation.

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer contractors.

(j) *Suspension and Decertification Process—(1) Applicability.* This paragraph (j) sets forth the procedures for suspension and decertification of observers and observer contractors under this section.

(2) *Policy.* (i) NMFS must certify responsible and qualified observers and observer contractors only. Suspension and decertification are discretionary actions that, taken in accordance with this section, are appropriate means to effectuate this policy.

(ii) The serious nature of suspension and decertification requires that these actions be taken only in the public interest for the promotion of fishery conservation and management and not for purposes of punishment. NMFS may impose suspension or decertification only for the causes and in accordance with the procedures set forth in this section.

(iii) In addition to suspension and decertification, observers and observer contractors who violate provisions of this part may be subject to penalties, fines, and other sanctions as authorized by law.

(3) *Public availability of suspension or decertification records.* Public availability of suspension or decertification records will depend upon the provisions of the Freedom of Information Act and other applicable law.

(4) *Effect and timing of suspension or decertification.* (i) Observers or observer contractors decertified or suspended must not provide services prescribed by this section to vessels and shoreside processors.

(ii) Suspension and decertification actions may be combined and imposed simultaneously.

(iii) Suspension or decertification of observer contractors includes all divisions or other organizational elements of observer contractors, unless the suspension or decertification decision is limited by its terms to specific divisions or organizational elements. The suspending or decertifying official may, at his or her sole discretion, include any affiliates of observer contractors if they are specifically named and given written notice of the suspension or proposed decertification and an opportunity to respond under paragraph (j)(5)(iii)(B) or (j)(6)(iii)(C) of this section.

(5) *Suspension*—(i) *General.* (A) The suspending official may, in the public interest, suspend observers or observer contractors for any of the causes in paragraph (j)(5)(ii) of this section, using the procedures in paragraph (j)(5)(iii) of this section.

(B) Suspension may be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when NMFS determines that immediate action is necessary. In assessing the adequacy of the evidence, the suspending official should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(ii) *Causes for suspension.* The suspending official may suspend observers or observer contractors:

(A) Upon a determination, based upon adequate evidence, that observers or observer contractors committed any acts or omissions constituting a cause for decertification under paragraph (j)(6)(ii) of this section; or

(B) Upon indictment for any of the causes for decertification in (j)(6)(ii)(A)(*1*) or (j)(6)(ii)(B)(*1*) of this section.

(iii) *Procedures*—(A) *Review.* The suspending official must review all available evidence and must promptly determine whether or not to proceed with suspension. The suspending official may refer the matter to the NMFS investigator for further investigation, or to the decertifying officer.

(B) *Notice of suspension.* When observers or observer contractors and any specifically named affiliates are suspended, they must be immediately advised personally or by certified mail, return receipt requested, at the last known residence or place of business:

(*1*) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that observers or observer contractors have committed acts or omissions constituting grounds for suspension under (j)(5)(ii) of this section. Such acts or omissions may be described in terms sufficient to place observers or observer contractors on notice without disclosing NMFS' evidence.

(*2*) That the suspension is for a temporary period pending the completion of an investigation and such decertification proceedings as may ensue.

(*3*) Of the cause(s) relied upon under paragraph (j)(5)(ii) of this section for imposing suspension.

(*4*) Of the effect of the suspension.

(*5*) That, within 30 days after receipt of the notice, the observers or observer contractors may submit, in writing, documentary evidence and argument in

opposition to the suspension, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(*6*) That additional proceedings to determine disputed material facts may be conducted unless:

(*i*) The action is based on an indictment; or

(*ii*) A determination is made, on the basis of NOAA General Counsel advice, that the substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(C) *Dispute.* For suspensions not based on an indictment, if NMFS determines that the observers' or observer contractors' submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of NOAA General Counsel advice, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official:

(*1*) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of suspension.

(*2*) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The suspending official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(D) *Suspending official's decision.* (*1*) The suspending official's decision must be based on all the information in the administrative record, including any submission made by observers or observer contractors on action based on an indictment:

(*i*) In which observers or observer contractors' submissions do not raise a genuine dispute over material facts; or

(*ii*) In which additional proceedings to determine disputed material facts have been denied on the basis of NOAA General Counsel advice.

(*2*) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The suspending official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(*3*) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part.

(*4*) The suspending official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(*5*) Prompt written notice of the suspending official's decision to affirm, modify, or terminate the notice of suspension issued under this paragraph (j)(5) must be served on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

(E) *Period of suspension.* (*1*) Suspension is for a temporary period pending the completion of any investigation and any ensuing legal proceedings or decertification proceedings, including any administrative review under paragraph (j)(7) of this section, unless sooner terminated by the suspending official or as provided under this paragraph (j). If suspension is in effect, the decertifying official will expedite any related decertification proceedings.

(*2*) If legal proceedings or decertification proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated.

(F) *Scope of suspension for observer contractors.* The scope of suspension must be the same as that for decertification under paragraph (j)(6)(v), except that the procedures set out under paragraph (j)(5) must be used in imposing suspension.

(6) *Decertification*—(i) *General.* The decertifying official may, in the public interest, decertify observers or observer contractors for any of the causes in paragraph (j)(6)(ii) of this section using the procedures in paragraph (j)(6)(iii) of this section. The existence of a cause for decertification does not necessarily require that observers or observer contractors be decertified; the seriousness of the acts or omissions and any mitigating factors should be considered in making any decertification decision. The existence or nonexistence of any mitigating factors is not necessarily determinative of an observers' or observer contractors' present fitness. Accordingly, if a cause for decertification exists, observers or observer contractors have the burden of demonstrating, to the satisfaction of the decertifying official, present fitness and that decertification is not necessary.

(ii) *Causes for decertification*—(A) *Observers.* (*1*) The decertifying official may decertify observers for a conviction of or civil judgment for the following:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties of observers as prescribed by NMFS;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(*iii*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the present fitness of observers.

(*2*) The decertifying official may decertify observers, based upon a preponderance of the evidence, upon a determination that observers have:

(*i*) Failed to satisfactorily perform the duties of observers as prescribed by NMFS; or

(*ii*) Failed to abide by the standards of conduct for observers as prescribed under paragraph (h)(2) of this section.

(B) *Observer contractors.* (*1*) The decertifying official may decertify observer contractors for a conviction of or civil judgment for the following:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(*iii*) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present fitness of observer contractors.

(*2*) The decertifying official may decertify observer contractors, based upon a preponderance of the evidence, upon a determination that observer contractors have:

(*i*) Failed to satisfactorily perform the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section; or

(*ii*) A conflict of interest as set out under paragraph (i)(3) of this section.

(iii) *Procedures*—(A) *Investigation and referral.* NMFS personnel must promptly report to the NMFS investigator matters appropriate for further investigation. The NMFS investigator must investigate matters so referred and submit the investigative material to the decertifying official or, if appropriate, to the suspending official.

(B) *Review.* The decertifying official must review all available evidence and must promptly determine whether or not to proceed with decertification. The decertifying official may refer the matter to the NMFS investigator for further investigation or, if appropriate, to the suspending official.

(C) *Notice of proposed decertification.* If the decertifying official determines to proceed with decertification, he or she must serve a notice of proposed decertification upon observers or observer contractors and any specifically named affiliates, personally or by certified mail, return receipt requested, at the last known residence or place of business, advising:

(*1*) That decertification is being considered.

(*2*) Of the reasons for the proposed decertification in terms sufficient to put observers or observer contractors on

notice of the conduct or transaction(s) upon which it is based.

(*3*) Of the cause(s) relied upon under paragraph (j)(6)(ii) of this section for proposing decertification.

(*4*) That, within 30 days after receipt of the notice, observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the proposed decertification, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(*5*) Of NMFS' procedures governing decertification decision making.

(*6*) Of the effect of the issuance of the notice of proposed decertification.

(*7*) Of the potential effect of an actual decertification.

(D) *Dispute.* In actions not based upon a conviction or civil judgment, if it is found that observers' or observer contractors' submissions raise a genuine dispute over facts material to the proposed decertification, the decertifying official:

(*1*) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of proposed decertification.

(*2*) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The decertifying official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(E) *Decertifying official's decision.* (*1*) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the decertifying official must make a decision on the basis of all the information in the administrative record, including any submission made by observers or observer contractors. The decision must be made after receipt of any timely information and argument submitted by observers or observer contractors.

(*2*) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The decertifying official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(*3*) The decertifying official may refer matters involving disputed material facts to another official for findings of fact. The decertifying official may reject any such findings, in whole or in part.

(*4*) The decertifying official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(*5*) In any action in which the proposed decertification is not based upon a conviction or civil judgment, the cause for decertification may be established by a preponderance of the evidence.

(F) *Notice of decertifying official's decision.* (*1*) If the decertifying official decides to impose decertification, observers or observer contractors and any affiliates involved must be given prompt notice personally or by certified mail, return receipt requested, at the last known residence or place of business. Such notice must:

(*i*) Refer to the notice of proposed decertification.

(*ii*) Specify the reasons for decertification.

(*iii*) Advise that the decertification is effective immediately, unless the decertifying official determines that there is a compelling reason for maintaining certification for a specified period under conditions and restrictions necessary and appropriate to protect the public interest or promote fishery conservation and management and states the reasons in the notice.

(*2*) If decertification is not imposed, the decertifying official must promptly notify observers or observer contractors and any affiliates involved, by certified mail, return receipt requested, at the last known residence or place of business.

(iv) *Period of decertification*. (A) Decertification must be in force indefinitely or until rescinded.

(B) The decertifying official may rescind decertification, upon observers' or observer contractors' request, supported by documentation, for reasons such as:

(*1*) Newly discovered material evidence;

(*2*) Reversal of the conviction or civil judgment upon which the decertification was based;

(*3*) Bona fide change in ownership or management;

(*4*) Elimination of other causes for which the decertification was imposed; or

(*5*) Other reasons the decertifying official deems appropriate.

(v) *Scope of decertification*. (A) The improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with observer contractors may be imputed to the observer contractors when the conduct occurred in connection with the performance of duties for or on behalf of observer contractors, or with observer contractors' knowledge, approval, or acquiescence. Observer contractors' acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(B) The improper conduct of observer contractors may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with observer contractors who participated in, knew of, or had reason to know of the observer contractors' conduct.

(7) *Administrative review of suspension or decertification*.

(i) Observers or observer contractors may petition for review of a suspension decision issued under paragraph (j)(5)(iii) of this section or a decertification decision issued under paragraph (j)(6)(iii) of this section within 30 days after the date the decision was served. The petition must be addressed to the appeals officer identified in the notice of suspension or decertification. Any petitioned suspension will remain in effect pending the appeals officer's written decision to affirm, modify or terminate the suspension.

(ii) Administrative review is discretionary. Petitions for discretionary review may be filed only upon one or more of the following grounds:

(A) A finding of material fact is clearly erroneous based upon the administrative record;

(B) A substantial and important question of policy or discretion is involved; or

(C) A prejudicial error has occurred.

(iii) If the appeals officer declines review based on the written petition, observers or observer contractors must be immediately advised of the decision to decline review personally or by certified mail, return receipt requested, at the last known residence or place of business.

(iv) If the appeals officer grants review based on the written petition, he or she may request further written explanation from observers, observer contractors, or the decertifying officer or suspending officer. The appeals officer will then render a written decision to affirm, modify, or terminate the suspension or decertification or return the matter to the suspending or decertifying official for further findings. The appeals officer must base the decision on the administrative records compiled under paragraphs (j)(5) or (j)(6) of this section, as appropriate. The appeals officer will serve the decision on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

(v) An appeals officer's decision imposing suspension, or decertification or an unpetitioned suspending, or decertifying official's decision is the final administrative decision of the U.S. Department of Commerce.

(k) *Release of observer data to the public*—(1) *Summary of weekly data*. The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number.

(ii) Number of chinook salmon and ''other salmon'' observed.

(iii) The ratio of total round weight of halibut or Pacific herring to the

total round weight of groundfish in sampled catch.

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls.

(v) The number of observed trawl hauls or fixed gear sets.

(vi) The number of trawl hauls that were basket sampled.

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) *Haul-specific data.* (i) The information listed in paragraphs (k)(2)(i) (A) through (M) of this section and collected by observers from observed hauls on board vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date.

(B) Time of day gear is deployed.

(C) Latitude and longitude at beginning of haul.

(D) Bottom depth.

(E) Fishing depth of trawl.

(F) The ratio of the number of chinook salmon to the total round weight of groundfish.

(G) The ratio of the number of other salmon to the total round weight of groundfish.

(H) The ratio of total round weight of halibut to the total round weight of groundfish.

(I) The ratio of total round weight of herring to the total round weight of groundfish.

(J) The ratio of the number of king crab to the total round weight of groundfish.

(K) The ratio of the number of C. *bairdi* Tanner crab to the total round weight of groundfish.

(L) Sea surface temperature (where available).

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (k)(2)(i) of this section are collected will not be released.

(3) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Administrator written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (k) (1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

[61 FR 56431, Nov. 1, 1996, as amended at 61 FR 63761, Dec. 2, 1996; 61 FR 65989, Dec. 16, 1996; 62 FR 60182, Nov. 7, 1997; 62 FR 63891, Dec. 3, 1997; 62 FR 67760, Dec. 30, 1997; 63 FR 11168, Mar. 6, 1998; 63 FR 30409, June 4, 1998; 63 FR 69025, Dec. 15, 1998; 64 FR 20215, Apr. 26, 1999]

EFFECTIVE DATE NOTE: At 65 FR 4540, Jan. 28, 2000, § 679.50 was amended by adding paragraphs (c)(5) and (d)(5), effective Jan. 21, 2000, through July 20, 2000. At 65 FR 39107, 39110, June 23, 2000, the effective date was extended from July 20, 2000, through Jan. 16, 2001, and paragraphs (c)(5) and (d)(5) were amended by removing ''applicable through July 20, 2000'' and adding in its place ''applicable through January 16, 2001''. For the convenience of the user, the added text follows:

§ 679.50 Groundfish Observer Program.

* * * * *

(c) * * *

(5) *AFA catcher/processors and motherships* (applicable through January 16, 2001)—(i) *Coverage requirement.*

(A) *Unrestricted AFA catcher/processors and AFA motherships.* The owner or operator of an unrestricted AFA catcher/processor or AFA mothership must provide at least two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at § 679.50(c)(5)(iii) would otherwise preclude sampling as required under § 679.62(a)(1).

(B) *Restricted AFA catcher/processors.* The owner or operator of a restricted AFA catcher/processor must provide at least two NMFS certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. When a restricted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements at § 679.50(c)(1)(iv) apply.

(ii) *Certification level.* At least one of the observers required under paragraphs (c)(5)(i)(A) and (B) of section must be certified as a lead CDQ observer as specified in paragraph (h)(1)(i)(E)(*1*) of this section.

(iii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period, and, the observer may not sample more than 9 hours in each 24-hour period.

* * * * *

(d) *Observer requirements for shoreside processors.* * * *

(5) *AFA inshore processors* (applicable through January 16, 2001)—(i) *Coverage level.* An AFA inshore processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. A processor that takes delivery of or processes pollock for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each such day.

(ii) *Multiple processors.* An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BSAI directed pollock fishery.

* * * * *

EFFECTIVE DATE NOTE: At 65 FR 4541, Jan. 28, 2000, Subpart F was added, effective Jan. 21, 2000, through July 20, 2000, except § 679.60(d) which contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. At 65 FR 15578, Mar. 23, 2000, § 679.64 was corrected by revising paragraphs (a), (b), the first sentence of paragraph (d), and paragraph (e). At 65 FR 39107, June 23, 2000, the effective date was extended from July 20, 2000, through Jan. 16, 2001. For the convenience of the user, Subpart F follows:

Subpart F—American Fisheries Act Management Measures (Applicable through January 16, 2001)

§ 679.59 Authority and related regulations.

Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) [Div. C, Title II, Subtitle II, Public Law No. 105–277, 112 Stat. 2681 (1998)]. Additional regulations that implement specific provisions of the AFA are set out at § 679.2 *Definitions,* § 679.4 *Permits,* § 679.5 *Recordkeeping and reporting,* § 679.7 *Prohibitions,* § 679.20 *General limitations,* § 679.21 *Prohibited species bycatch management,* § 679.28 *Equipment and operational requirements for Catch Weight Measurement,* § 679.31 *CDQ reserves,* and § 679.50 *Groundfish Observer Program applicable through December 31, 2000.*

§ 679.60 Catcher/processor and mothership pollock cooperatives.

(a) *Applicability.* Any fishery cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BSAI pollock for processing by catcher/processors or motherships must comply with the provisions of this section.

(b) *Filing of fishery cooperative contracts.* Any contract implementing a fishery cooperative for the purpose of cooperatively managing directed fishing for BSAI pollock for processing by catcher/processors or motherships, and any material modifications to any such contract must be filed not less than 30 days prior to the start of fishing under the contract with the Council and with the Regional Administrator, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Any fishery cooperative intending to deliver pollock to an AFA mothership also must notify the owners of the AFA mothership not less than 30 days prior to the start of fishing under the contract.

(c) *Required elements.* Any cooperative contract filed under paragraph (b) of this section must contain the following information:

(1) A list of parties to the contract,

(2) A list of all vessels and processors that will harvest and process pollock harvested under the cooperative,

(3) The amount or percentage of pollock allocated to each party to the contract, and

(4) For a cooperative that includes catcher vessels delivering pollock to motherships or catcher/processors, penalties to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(i) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.63(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.63(b) and as announced to NMFS by the Regional Administrator.

(d) *Annual report.* Any fishery cooperative governed by this section must submit annual preliminary and final written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, for public distribution. The preliminary report covering activities through November 1 must be submitted by December 1 of each year and the final report must be submitted by January 31 of each year.

(1) *Required contents.* The preliminary and final written reports must contain, at a minimum:

(i) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis;

(ii) The cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on a area-by-area and vessel-by-vessel basis;

(iii) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

(iv) A description of any actions taken by the cooperative to penalize vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

§ 679.61 Inshore pollock cooperatives.

(a) *Applicability.* Any fishery cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor must comply with the provisions of this section.

(b) *Filing of fishery cooperative contracts.* Any contract implementing a fishery cooperative for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor, any material modifications to any such contract, and a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request, must be filed with the Council and with the Regional Administrator no later than 30 days prior to the start of fishing under the contract.

(c) *Required elements.* Any cooperative contract filed under paragraph (b) of this section must contain the following:

(1) A list of parties to the contract,

(2) A list of all vessels and processors that will harvest and process pollock harvested under the cooperative,

(3) The amount or percentage of pollock allocated to each party to the contract, and

(4) Penalties to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard

limit for each BSAI or GOA groundfish sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(i) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.63(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish amount as calculated by NMFS under § 679.63(b) and as announced to NMFS by the Regional Administrator.

(d) *Responsible parties*—(1) *Designated representative.* Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, the signing of cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with all applicable regulations in this part.

(2) *Agent for service of process.*

(i) Any cooperative formed under this section must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels listed on the cooperative fishing permit. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent on the application for an inshore cooperative fishing permit. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

(ii) The owners and operators of all member vessels of an inshore pollock cooperative are responsible for ensuring that the agent is capable of accepting service on behalf of the cooperative for at least 5 years from the expiration day of the AFA permit. The owners and operators of all member vessels of a cooperative are also responsible for ensuring that a substitute agent is designated and the Agency is notified of the name, address and telephone number of the substitute representative in the event the previously designated representative is no longer capable of accepting service on behalf of the cooperative or the cooperative members within that 5-year period.

(e) *Cooperative pollock allocations.* An inshore pollock cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(l)(6) will receive a sub-allocation of the annual inshore pollock allocation that is determined according to the following procedure:

(1) *Calculation of individual vessel catch histories.* The Regional Administrator will calculate an official AFA inshore cooperative catch history for every catcher vessel that made a landing of inshore pollock in the Bering Sea Subarea and/or Aleutian Islands Subarea during 1995, 1996, or 1997 according to the following steps:

(i) *Determination of annual landings.* For each year from 1995 through 1997 the Regional Administrator will determine each vessel's total inshore landings; from the Bering Sea Subarea and Aleutian Islands Subarea separately.

(ii) *Offshore compensation.* If a catcher vessel made a total of 500 or more mt of landings of Bering Sea Subarea pollock or Aleutian Islands Subarea pollock to catcher/processors or offshore motherships other than the EXCELLENCE (USCG documentation number 967502); GOLDEN ALASKA (USCG documentation number 651041); or OCEAN PHOENIX (USCG documentation number 296779) over the 3-year period from 1995 through 1997, then all offshore pollock landings made by that vessel during from 1995 through 1997 will be added to the vessel's inshore catch history by year and subarea.

(iii) *Best two out of three years.* After steps (i) and (ii) are completed, the 2

years with the highest landings will be selected for each subarea and added together to generate the vessel's official AFA inshore cooperative catch history for each subarea. A vessel's best 2 years may be different for the Bering Sea subarea and the Aleutian Islands Subarea.

(2) *Calculation of cooperative quota share.* Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for each subarea of the BSAI that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for that subarea divided by the sum of the official AFA inshore cooperative catch histories of all catcher vessels that made BSAI inshore pollock landings from that subarea in 1995, 1996, or 1997. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share to annual TAC allocation.* Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(f) *Cooperative fishing restrictions.* AFA inshore pollock cooperatives must comply with the following fishing restrictions.

(1) *Eligible vessels.* Only catcher vessels listed on the cooperative's AFA inshore cooperative fishing permit are permitted to harvest the cooperative's annual cooperative allocation.

(2) *Quota management.* All BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock in the BSAI during the fishing year for which the annual cooperative allocation is in effect will accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded.

(3) *Reporting of cooperative catch.* Each inshore pollock cooperative must report to the Regional Administrator its BSAI pollock harvest on an daily basis according to the recordkeeping and reporting requirements set out at § 679.5(o).

(g) *Annual report.* Any fishery cooperative governed by this section must submit annual preliminary and final written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, for public distribution. The preliminary and final reports must contain the same elements and must be submitted according to the same deadlines as the preliminary and final reports required under § 679.60(d).

§ 679.62 Requirements for vessels and processors.

(a) *AFA catcher/processors and AFA motherships*—(1) *Unrestricted AFA catcher/processors and AFA motherships.*

(i) *Catch weighing.* All groundfish landed by unrestricted AFA catcher/processors or received by AFA motherships must be weighed on a NMFS-certified scale and made available for sampling by a NMFS certified observer. The owner and operator of an unrestricted AFA catcher/processor or an AFA mothership must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each groundfish haul is weighed separately, and that no sorting of catch takes place prior to weighing.

(ii) *Observer sampling station.* The owner and operator of an unrestricted AFA catcher/processor or AFA mothership must provide an observer sampling station as described at § 679.28(d) and must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times that the vessel harvests groundfish or receives deliveries of groundfish harvested in the BSAI or GOA.

(2) *Restricted AFA catcher/processors.* The owner or operator of a restricted AFA catcher/processor must comply with the catch weighing and observer sampling station requirements set out in paragraph (a)(1) of this section at all

times the vessel is engaged in directed fishing for pollock in the BSAI.

(b) *AFA inshore processors*—(1) *Catch Weighing.* All groundfish landed by AFA catcher vessels engaged in directed fishing for pollock in the BSAI must be sorted and weighed on a scale approved by the State of Alaska under § 679.28(c) and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BSAI pollock by an AFA catcher vessel at least 1 hour prior to offloading. An observer must monitor each delivery of BSAI pollock from an AFA catcher vessel and be on site the entire time the delivery is being weighed or sorted.

§ 679.63 Harvest limitations in other fisheries.

(a) *AFA catcher/processor sideboards.* The Regional Administrator will establish restrictions on the ability of unrestricted AFA catcher/processors to engage in directed fishing for BSAI groundfish species other than pollock. Such limits will be established and managed as follows:

(1) *Calculation of groundfish harvest limits.* For each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI, the Regional Administrator will establish annual AFA catcher/processor harvest limits as follows:

(i) *Pacific cod.* The Pacific cod harvest limit will be equal to the 1997 aggregate catch of Pacific cod by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the Pacific cod TAC available to catcher/processors in 1997 multiplied by the Pacific cod TAC available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) *Aleutian Islands Pacific ocean perch.* The Aleutian Islands Pacific ocean perch harvest limit will be equal to the aggregate 1996 through 1997 catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch TACs available to catcher/processors in 1996 and 1997 multiplied by the Aleutian Islands Pacific ocean perch TAC available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(iii) *Atka mackerel.* The Atka mackerel harvest limit for each area and season will be equal to:

(A) Bering Sea subarea and Eastern Aleutian Islands, zero;

(B) Central Aleutian Islands, 11.5 percent of the annual TAC specified for Atka mackerel; and

(C) Western Aleutian Islands, 20 percent of the annual TAC specified for Atka mackerel.

(iv) *Remaining groundfish species.* Except as provided for in paragraphs (a)(2)(1)(i) through (a)(2)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the aggregate 1995 through 1997 catch of that species by catcher/processors listed in listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the TACs of that species or species group available to catcher/processors in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(2) *Calculation of halibut and crab PSC bycatch limits.* For each halibut or crab PSC limit specified for catcher/processors in the BSAI, the Regional Administrator will establish an annual unrestricted AFA catcher/processor PSC limit equal to the estimated aggregate 1995 through 1997 PSC bycatch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA while engaged in directed fishing for species other than pollock divided by the aggregate PSC bycatch limit of that species for catcher/processors from 1995 through 1997 multiplied by the PSC limit of that species available to catcher/processors in the year in which the harvest limit will be in effect.

(3) *Management of AFA catcher/processor sideboard limits.* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits

for AFA catcher/processors in accordance with the procedures set out in § 679.20(d)(1)(iv), and § 679.21(e)(3)(v).

(b) *AFA catcher vessel sideboards.* The Regional Administrator will establish restrictions on the ability of AFA catcher vessels to engage in directed fishing for other groundfish species in the GOA and BSAI. Such restrictions will be established and managed as follows:

(1) *Calculation of groundfish and PSC sideboards.* For each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI; and for each halibut and crab PSC limit, the Regional Administrator will establish annual AFA catcher vessel groundfish harvest limits and PSC bycatch limits as follows:

(i) *Affected vessels.* Catcher vessel harvest limits and PSC bycatch limits will apply to all AFA catcher vessels in all GOA and non-pollock BSAI groundfish fisheries except:

(A) *BSAI Pacific cod*—(*1*) AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested a combined total of less than 5,100 mt of BSAI pollock, and to have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997 will be exempt from sideboard closures for BSAI Pacific cod.

(*2*) AFA catcher vessels with mothership endorsements will be exempt from BSAI Pacific cod catcher vessel sideboard directed fishing closures after March 1 of each fishing year.

(B) *GOA groundfish.* AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested less than 5100 mt of BSAI pollock and to have made 40 or more landings of GOA groundfish from 1995 through 1997 will be exempt from GOA groundfish catcher vessel sideboard directed fishing closures.

(ii) *Calculation of BSAI and GOA groundfish harvest limits*—(A) *BSAI Groundfish other than BSAI Pacific cod.* The AFA catcher vessel groundfish harvest limit for each BSAI groundfish species or species group other than BSAI Pacific cod will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under § 679.63(b)(1)(i)(A)(*1*); divided by the sum of the TACs available to catcher vessels for that species or species group from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(B) *BSAI Pacific cod.* The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under § 679.63(b)(1)(i)(A)(*1*) divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(C) *GOA groundfish.* The AFA catcher vessel groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under § 679.63(b)(1)(i)(B); divided by the sum of the TACs of that species or species group available to catcher vessels from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(iii) *Calculation of BSAI and GOA PSC bycatch limits.* The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

(iv) *Management of AFA catcher vessel sideboard limits.* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher vessels using directed fishing closures and PSC closures according to the procedures set out at § 679.20(d)(1)(iv), § 679.21(d)(8), and § 679.21(e)(3)(v).

§ 679.64 AFA inshore processor and AFA mothership crab processing sideboard limits.

(a) *Applicability*. The crab processing limits in this section apply to non-CDQ crab processed by any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.60 or § 679.61.

(b) *Calculation of crab processing sideboard limits*. Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the non-CDQ total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, and 1997.

(c) *Notification of crab processing sideboard percentage limits*. An AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on each AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

(d) *Conversion of crab processing sideboard percentages and notification of crab processing sideboard poundage caps*. Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the non-CDQ (open access) pre-season guideline harvest level (GHL) established for that crab fishery by ADF&G. The Regional Administrator will notify each AFA inshore or mothership entity of its crab processing sideboard poundage cap through a letter to the owner of the AFA mothership or AFA inshore processor and by publishing the crab processing poundage caps on the NMFS-Alaska Region world wide web home page (http://www.fakr.noaa.gov).

(e) *Overages*. In the event that the actual harvest of a BSAI crab species during a non-CDQ crab fishery exceeds the non-CDQ pre-season GHL announced for that species, an AFA inshore or mothership entity may exceed its crab processing cap without penalty up to an amount equal to the AFA inshore or mothership entity's crab processing percentage multiplied by the final official harvest amount of that crab species as determined by the ADF&G and announced by NMFS on the NMFS-Alaska Region world wide web home page (http://www.fakr.noaa.gov).

Subpart G—Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the AFA.

AUTHORITY: Pub. L. 105–277, 16 U.S.C. 1801, *et seq*.

SOURCE: 65 FR 5281, Feb. 3, 2000; 65 FR 6921, Feb. 11, 2000, unless otherwise noted.

§ 679.70 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 679.2 of this title, the terms used in this subpart have the following meanings:

American Fisheries Act (AFA) means Title II of Pub.L. 105–277.

Borrower means (individually and collectively) all persons who, after January 1, 2000, harvest fee fish from the IC directed fishing allowance.

Business week means a 7-day period, Saturday through Friday.

Delivery value means the gross ex-vessel value of all fee fish at fish delivery.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated deposit account maintained in a federally chartered national bank for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the loan.

Fee means the six-tenths (0.6) of one cent that fish buyers deduct at fish delivery from the delivery value of each pound of round weight fee fish.

Fee fish means all pollock harvested from the IC directed fishing allowance beginning on February 10, 2000 and ending at such time as the loan's principal and interest are fully repaid.

Fish buyer means the first ex-vessel fish buyer who purchases fee fish from a fish seller.

Fish delivery means the point at which a fish buyer first takes delivery or possession of fee fish from a fish seller.

Fish seller means the harvester who catches and first sells fee fish to a fish buyer.

IC directed fishing allowance means the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

Loan means the loan authorized by section 207(a) of the AFA.

Net delivery value means the delivery value minus the fee.

Subaccount means the Inshore Component Pollock Subaccount of the Fishing Capacity Reduction Fund in the U.S. Treasury for the deposit of all funds involving the loan.

§ 679.71 Loan.

(a) *Principal amount*. The loan's principal amount is $75,000,000 (seventy five million dollars).

(b) *Interest*. Interest shall, from December 30, 1998, when NMFS disbursed the loan, until the date the borrower fully repays the loan, accrue at a fixed rate of 7.09 percent. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(c) *Repayment*. The fee shall be the exclusive source of loan repayment. The fee shall be paid on all fee fish.

(d) *Application of fee receipts*. NMFS shall apply all fee receipts it receives, first, to payment of the loan's accrued interest and, second, to reduction of the loan's principal balance.

(e) *Obligation*. The borrower shall repay the loan in accordance with the AFA and this subpart.

§ 679.72 Fee payment and collection.

(a) *Payment and collection*. (1) The fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying or promising later to pay the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value or the fish buyer's promise later to pay the net delivery value rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2)(i) Each fish seller shall be deemed, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, to be both the fish seller and the fish buyer—and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller—each time that the fish seller sells fee fish to:

(A) Any fish buyer whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any fish buyer who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other fish buyer not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, or

(C) Any other fish buyer who the fish seller has good reason to believe is a fish buyer not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, recordkeeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(b) *Notification*. (1) NMFS will send an appropriate fee payment and collection commencement notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(2) When NMFS determines that the loan is fully repaid, NMFS will publish a FEDERAL REGISTER notification that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send an appropriate fee termination notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(c) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason (if known) for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

§ 679.73 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer has collected through a date not more than 2 calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the subaccount in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to ''NOAA Inshore Component Pollock Loan Subaccount.'' The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the subaccount's lockbox and the manner and form of settlement

sheet by means of the notification in § 679.72(b)(1).

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date of delivery,

(ii) The fish seller's identity,

(iii) The round weight of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the subaccount's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* By January 15, 2001, and by each January 15 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:

(1) Total round weight bought;

(2) Total delivery value paid;

(3) Total fee amount collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to the subaccount lockbox;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the financial records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the round weight pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and its auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart, unless otherwise required by law; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes.

(i) *Refunds.* When NMFS determines that the loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

§ 679.74 Late charges.

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed within 5 days of the date due. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

§ 679.75 Enforcement.

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

§ 679.76 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for anyone to:

(1) Avoid, decrease, interfere with, hinder, or delay payment or collection of, or otherwise fail to fully and properly pay or collect, any fee due and payable under this subpart or convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(2) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the subaccount's lockbox account—all as this subpart requires;

(3) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(4) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(5) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(6) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(7) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(8) Otherwise materially interfere with the efficient and effective repayment of the loan.

(b) Anyone who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

APPENDIX A TO PART 679—PERFORMANCE AND TECHNICAL REQUIREMENTS FOR SCALES USED TO WEIGH CATCH AT SEA IN THE GROUNDFISH FISHERIES OFF ALASKA

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1. Introduction

(a) This appendix to part 679 contains the performance and technical requirements for scales to be approved by NMFS for use to weigh, at sea, catch from the groundfish fisheries off Alaska. The performance and technical requirements in this document have not been reviewed or endorsed by the National Conference on Weights and Measures. Regulations implementing the requirements of this appendix and additional requirements for and with respect to scales used to weigh catch at sea are found at 50 CFR 679.28(b).

(b) Revisions, amendments, or additions to this appendix may be made after notice and opportunity for public comments. Send requests for revisions, amendments, or additions to the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

(c) *Types of Scales Covered by Appendix*—This appendix contains performance and technical requirements for belt, automatic hopper, platform, and hanging scales.

(d) *Testing and Approval of Scales Used to Weigh Catch at Sea*—Scales used to weigh catch at sea are required to comply with four categories of performance and technical requirements: (1) Type evaluation; (2) initial inspection after installation while the vessel is tied up at a dock and is not under power at sea; (3) annual reinspection while the vessel is tied up at a dock and is not under power at sea; and (4) daily at-sea tests of the scale's accuracy. This appendix contains only the performance and technical requirements for type evaluation and initial and annual reinspections by an authorized scale inspector.

2. Belt Scales

2.1 *Applicability*. The requirements in this section apply to a scale or scale system that employs a conveyor belt in contact with a weighing element to determine the weight of a bulk commodity being conveyed across the scale.

2.2 *Performance Requirements*—2.2.1 *Maximum Permissible Errors.* For laboratory tests of a scale and initial inspections and annual reinspections of an installed scale when the vessel is tied up at a dock and is not under power at sea, the following maximum permissible errors (MPEs) are specified:

2.2.1.1 *Laboratory Tests.* See annex A to this appendix A for procedures for disturbance tests and influence factors.

a. *Disturbances.* ±0.18 percent of the weight of the load totalized.

b. *Influence Factors.* ±0.25 percent of the weight of the load totalized.

c. *Temperature Effect at Zero Flow Rate.* The difference between the values obtained at zero flow rate taken at temperatures that differ by 10° C ±0.2° C must not be greater than 0.035 percent of the weight of the load totalized at the maximum flow-rate for the time of the test.

2.2.1.2 *Zero Load Tests.* For zero load tests conducted in a laboratory or on a scale installed on a vessel and conducted when the vessel is tied up at a dock and not under power at sea, ±0.1 percent of the value of the minimum totalized load or 1 scale division (d), whichever is greater.

2.2.1.3 *Material Tests.* For material tests conducted in a laboratory or on a scale installed on a vessel and conducted when the vessel is tied up at a dock and not under power at sea, ±1.0 percent of the known weight of the test material.

2.2.2 *Minimum Flow Rate (Qmin).* The minimum flow rate must be specified by the manufacturer and must not be greater than 35 percent of the rated capacity of the scale in kilograms per hour (kg/hr) or metric tons per hour (mt/hr).

2.2.3 *Minimum Totalized Load* (Σmin). The minimum totalized load must not be less than the greater of—

a. Two percent of the load totalized in 1 hour at the maximum flow rate;

b. The load obtained at the maximum flow rate in 1 revolution of the belt; or

c. A load equal to 800 scale divisions (d).

2.2.4 *Influence Quantities.* The following requirements apply to influence factor tests conducted in the laboratory.

2.2.4.1 *Temperature.* A belt scale must comply with the performance and technical requirements at a range of temperatures from −10° C to +40° C. However, for special applications the temperature range may be different, but the range must not be less than 30° C and must be so specified on the scale's descriptive markings.

2.2.4.2 *Power Supply.* A belt scale must comply with the performance and technical requirements when operated within a range of −15 percent to +10 percent of the power supply specified on the scale's descriptive markings.

2.3.1 *Technical Requirements.*

2.3.1 *Indicators and Printers.*

2.3.1.1 *General.* A belt scale must be equipped with an indicator capable of displaying both the weight of fish in each haul or set and the cumulative weight of all fish or other material weighed on the scale between annual inspections (''the cumulative weight''), a rate of flow indicator, and a

printer. The indications and printed representations must be clear, definite, accurate, and easily read under all conditions of normal operation of the belt scale.

2.3.1.2 *Values Defined.* If indications or printed representations are intended to have specific values, these must be defined by a sufficient number of figures, words, or symbols, uniformly placed with reference to the indications or printed representations and as close as practicable to the indications or printed representations but not so positioned as to interfere with the accuracy of reading.

2.3.1.3 *Units.* The weight of each haul or set must be indicated in kilograms, and the cumulative weight must be indicated in either kilograms or metric tons and decimal subdivisions.

2.3.1.4 *Value of the Scale Division.* The value of the scale division (d) expressed in a unit of weight must be equal to 1, 2, or 5, or a decimal multiple or sub-multiple of 1, 2, or 5.

2.3.1.5 *Range of Indication.* The range of the weight indications and printed values for each haul or set must be from 0 kg to 999,999 kg and for the cumulative weight must be from 0 to 99,999 metric tons.

2.3.1.6 *Resettable and Non-resettable Values.* The means to indicate the weight of fish in each haul or set must be resettable to zero. The means to indicate the cumulative weight must not be resettable to zero without breaking a security means and must be reset only upon direction of NMFS or an authorized scale inspector.

2.3.1.7 *Rate of Flow Indicator.* Permanent means must be provided to produce an audio or visual signal when the rate of flow is less than the minimum flow rate or greater than 98 percent of the maximum flow rate.

2.3.1.8 *Printed Information.* The information printed must include—

a. For catch weight:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The haul or set number;

iv. The total weight of catch in each haul or set;

v. The total cumulative weight of all fish or other material weighed on the scale; and

vi. The date and time the information is printed.

b. For the audit trail:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The date and time (to the nearest minute) that the adjustment was made;

iv. The name or type of adjustment being made; and

v. The initial and final values of the parameter being changed.

2.3.1.9 *Permanence of Markings.* All required indications, markings, and instructions must be distinct and easily readable and must be of such character that they will not tend to become obliterated or illegible.

2.3.1.10 *Power Loss.* In the event of a power failure, means must be provided to retain in a memory the weight of fish in each haul or set for which a printed record has not yet been made, the cumulative weight, and the information on the audit trail.

2.3.1.11 *Adjustable Components.* An adjustable component that when adjusted affects the performance or accuracy of the scale must be held securely in position and must not be capable of adjustment without breaking a security means unless a record of the adjustment is made on the audit trail described in 2.3.1.12.

2.3.1.12 *Audit Trail.* An audit trail in the form of an event logger must be provided to document changes made using adjustable components. The following information must be provided in an electronic form that cannot be changed or erased by the scale operator, can be printed at any time, and can be cleared by the scale manufacturer's representative upon direction by NMFS or by an authorized scale inspector:

a. The date and time (to the nearest minute) of the change;

b. The name or type of adjustment being made; and

c. The initial and final values of the parameter being changed.

2.3.1.13 *Adjustments to Scale Weights.* The indicators and printer must be designed so that the scale operator cannot change or adjust the indicated and printed weight values.

2.3.2 *Weighing Elements.*

2.3.2.1 *Speed Measurement.* A belt scale must be equipped with means to accurately sense the belt travel and/or speed whether the belt is loaded or empty.

2.3.2.2 *Conveyer Belt.* The weight per unit length of the conveyor belt must be practically constant. Belt joints must be such that there are no significant effects on the weighing results.

2.3.2.3 *Overload Protection.* The load receiver must be equipped with means so that an overload of 150 percent or more of the capacity does not affect the metrological characteristics of the scale.

2.3.2.4 *Speed Control.* The speed of the belt must not vary by more than 5 percent of the nominal speed.

2.3.2.5 *Adjustable Components.* An adjustable component that can affect the performance of the belt scale must be held securely in position and must not be capable of adjustment without breaking a security means.

2.3.2.6 *Motion Compensation.* A belt scale must be equipped with automatic means to compensate for the motion of a vessel at sea so that the weight values indicated are within the MPEs. Such means shall be a reference load cell and a reference mass weight or other equally effective means. When

equivalent means are utilized, the manufacturer must provide NMFS with information demonstrating that the scale can weigh accurately at sea.

2.3.3 *Installation Conditions.* A belt scale must be rigidly installed in a level condition.

2.3.4 *Marking.* A belt scale must be marked with the—

a. Name, initials, or trademark of the manufacturer or distributer;

b. Model designation;

c. Non-repetitive serial number;

d. Maximum flow rate (Qmax);

e. Minimum flow rate (Qmin);

f. Minimum totalized load (Σmin);

g. Value of a scale division (d);

h. Belt speed;

i. Weigh length;

j. Maximum capacity (Max);

k. Temperature range (if applicable); and

l. Mains voltage.

2.3.4.1 *Presentation.* The markings must be reasonably permanent and of such size, shape, and clarity to provide easy reading in normal conditions of use. They must be grouped together in a place visible to the operator.

2.4 Tests.

2.4.1 *Minimum Test Load.* The minimum test load must be the greater of—

a. 2 percent of the load totalized in 1 hour at the maximum flow rate;

b. The load obtained at maximum flow rate in one revolution of the belt; or

c. A load equal to 800 scale divisions.

2.4.2 *Laboratory Tests.*

2.4.2.1 *Influence Quantity and Disturbance Tests.* Tests must be conducted according to annex A and the results of these tests must be within the values specified in section 2.2.1.1.

2.4.2.2 *Zero-Load Tests.* A zero-load test must be conducted for a time equal to that required to deliver the minimum totalized load (''min). At least two zero-load tests must be conducted prior to a material test. The results of these tests must be within the values specified in section 2.2.1.2.

2.4.2.3 *Material Tests.* At least one material test must be conducted with the weight of the material or simulated material equal to or greater than the minimum test load. The results of these tests must be within the values specified in section 2.2.1.3.

2.4.3 *Annual Inspections.*

2.4.3.1 *Zero-Load Tests.* A zero-load test must be conducted for a time equal to that required to deliver the minimum totalized load (Σmin). At least one zero-load test must be conducted prior to each material test. The results of this test must be within the values specified in section 2.2.1.2.

2.4.3.2 *Material Tests.* At least one material or simulated material test must be conducted with the weight of the material or simulated material equal to or greater than the minimum test load. The results of these tests must be within the values specified in section 2.2.1.3.

3. *Automatic Hopper Scales*

3.1 *Applicability.* The requirements in this section apply to a scale or scale system that is designed for automatic weighing of a bulk commodity in predetermined amounts.

3.2 *Performance Requirements.*

3.2.1 *Maximum Permissible Errors.* For laboratory tests of a scale and initial inspection and annual reinspections of an installed scale when the vessel is tied up at a dock and is not under power at sea, the following MPEs are specified:

3.2.1.1 *Laboratory Tests.* See annex A to appendix A for procedures for disturbance test and influence factors.

a. *Disturbances.* Significant fault (sf) (±scale division).

b. *Influence Factors.* ±1 percent of test load.

3.2.1.2 *Increasing and Decreasing Load Tests.* For increasing and decreasing load tests conducted in a laboratory or on a scale installed on a vessel tied up at a dock and not under power at sea, ±1.0 percent of the test load.

3.2.2 *Minimum Weighment* (Σmin). The minimum weighment must not be less than 20 percent of the weighing capacity, or a load equal to 100 scale intervals (d), except for the final weighment of a lot.

3.2.3 *Minimum Totalized Load (Lot).* The minimum totalized load must not be less than 4 weighments.

3.2.4 *Influence Quantities.* The following requirements apply to influence factor tests conducted in the laboratory:

3.2.4.1 *Temperature.* A hopper scale must comply with the metrological and technical requirements at temperatures from –10° C to +40° C. However, for special applications the temperature range may be different, but the range must not be less than 30° C and must be so specified on the scale's descriptive markings.

3.2.4.1.1 *Operating Temperature.* A hopper scale must not display or print any usable weight values until the operating temperature necessary for accurate weighing and a stable zero-balance condition have been attained.

3.2.4.2 *Power Supply.* A hopper scale must comply with the performance and technical requirements when operated within –15 percent to +10 percent of the power supply specified on the scale's descriptive markings.

3.3 *Technical Requirements.*

3.3.1 *Indicators and Printers.*

3.3.1.1 *General.* a. A hopper scale must be equipped with an indicator and printer that indicates and prints the weight of each load and a no-load reference value; and a printer that prints the total weight of fish in each haul or set and the total cumulative weight of all fish and other material weighed on the scale between annual inspections (''the cumulative weight''). The indications and

printed information must be clear, definite, accurate, and easily read under all conditions of normal operation of the hopper scale.

b. A no-load reference value may be a positive or negative value in terms of scale divisions or zero. When the no-load reference value is zero, the scale must return to a zero indication (within ± 0.5 scale division) when the load receptor (hopper) is empty following the discharge of all loads, without the intervention of either automatic or manual means.

3.3.1.2 *Values Defined.* If indications or printed representations are intended to have specific values, these must be defined by a sufficient number of figures, words, or symbols, uniformly placed with reference to the indications or printed representations and as close as practicable to the indications or printed representations but not so positioned as to interfere with the accuracy of reading.

3.3.1.3 *Units.* The weight of each haul or set must be indicated in kilograms, and the cumulative weight must be indicated in either kilograms or metric tons and decimal subdivisions.

3.3.1.4 *Value of the Scale Division.* The value of the scale division (d) expressed in a unit of weight must be equal to 1, 2, or 5, or a decimal multiple or sub-multiple of 1, 2, or 5.

3.3.1.5 *Weighing Sequence.* For hopper scales used to receive (weigh in), the no-load reference value must be determined and printed only at the beginning of each weighing cycle. For hopper scales used to deliver (weigh out), the no-load reference value must be determined and printed only after the gross-load weight value for each weighing cycle has been indicated and printed.

3.3.1.6 *Printing Sequence.* Provision must be made so that all weight values are indicated until the completion of the printing of the indicated values.

3.3.1.7 *Printed Information.* The information printed must include—

a. For catch weight:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The haul or set number;

iv. The total weight of catch in each haul or set;

v. The total cumulative weight of all fish or other material weighed on the scale; and

vi. The date and time the information is printed.

b. For the audit trail:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The date and time (to the nearest minute) of the change;

iv. The name or type of adjustment being made; and

v. The initial and final values of the parameter being changed.

3.3.1.8 *Permanence of Markings.* All required indications, markings, and instructions must be distinct and easily readable and must be of such character that they will not tend to become obliterated or illegible.

3.3.1.9 *Range of Indication.* The range of the weight indications and printed values for each haul or set must be from 0 kg to 999,999 kg and for the cumulative weight must be from 0 to 99,999 metric tons.

3.3.1.10 *Non-Resettable Values.* The cumulative weight must not be resettable to zero without breaking a security means and must be reset only upon direction by NMFS or by an authorized scale inspector.

3.3.1.11 *Power Loss.* In the event of a power failure, means must be provided to retain in a memory the weight of fish in each haul or set for which a printed record has not yet been made, the cumulative weight, and the information on the audit trail described in 3.3.1.13.

3.3.1.12 *Adjustable Components.* An adjustable component that, when adjusted, affects the performance or accuracy of the scale must not be capable of adjustment without breaking a security means, unless a record of the adjustment is made on the audit trail described in 3.3.1.13.

3.3.1.13 *Audit Trail.* An audit trail in the form of an event logger must be provided to document changes made using adjustable components. The following information must be provided in an electronic form that cannot be changed or erased by the scale operator, can be printed at any time, and can be cleared by the scale manufacturer's representative upon direction of NMFS or by an authorized scale inspector:

a. The date and time (to the nearest minute) of the change;

b. The name or type of adjustment being made; and

c. The initial and final values of the parameter being changed.

3.3.1.14 *Zero-Load Adjustment.* A hopper scale must be equipped with a manual or semi-automatic means that can be used to adjust the zero-load balance or no-load reference value.

3.3.1.14.1 *Manual.* A manual means must be operable or accessible only by a tool outside of, or entirely separate from, this mechanism or enclosed in a cabinet.

3.3.1.14.2 *Semi-Automatic.* A semi-automatic means must be operable only when the indication is stable within ±1 scale division and cannot be operated during a weighing cycle (operation).

3.3.1.15 *Damping Means.* A hopper scale must be equipped with effective automatic means to bring the indications quickly to a readable stable equilibrium. Effective automatic means must also be provided to permit the recording of weight values only when the

indication is stable within plus or minus one scale division.

3.3.1.16 *Adjustments to Scale Weights.* The indicators and printer must be designed so that the scale operator cannot change or adjust the indicated and printed weight values.

3.3.2 *Interlocks and Gate Control.* A hopper scale must have operating interlocks so that—

a. Product cannot be weighed if the printer is disconnected or subject to a power loss;

b. The printer cannot print a weight if either of the gates leading to or from the weigh hopper is open;

c. The low paper sensor of the printer is activated;

d. The system will operate only in the sequence intended; and

e. If the overfill sensor is activated, this condition is indicated to the operator and is printed.

3.3.3 *Overfill Sensor.* The weigh hopper must be equipped with an overfill sensor that will cause the feed gate to close, activate an alarm, and stop the weighing operation until the overfill condition has been corrected.

3.3.4 *Weighing Elements.*

3.3.4.1 *Overload Protection.* The weigh hopper must be equipped with means so that an overload of 150 percent or more of the capacity of the hopper does not affect the metrological characteristics of the scale.

3.3.4.2 *Adjustable Components.* An adjustable component that can affect the performance of the hopper scale must be held securely in position and must not be capable of adjustment without breaking a security means.

3.3.4.3 *Motion Compensation.* A hopper scale must be equipped with automatic means to compensate for the motion of a vessel at sea so that the weight values indicated are within the MPEs. Such means shall be a reference load cell and a reference mass weight or other equally effective means. When equivalent means are utilized, the manufacturer must provide NMFS with information demonstrating that the scale can weigh accurately at sea.

3.3.5 *Installation Conditions.* A hopper scale must be rigidly installed in a level condition.

3.3.6 *Marking.* A hopper scale must be marked with the following:

a. Name, initials, or trademark of the manufacturer or distributer;

b. Model designation;

c. Non-repetitive serial number;

d. Maximum capacity (Max);

e. Minimum capacity (min);

f. Minimum totalized load (Σmin);

g. Minimum weighment;

h. Value of the scale division (d);

i. Temperature range (if applicable); and

j. Mains voltage.

3.3.6.1 *Presentation.* Descriptive markings must be reasonably permanent and grouped together in a place visible to the operator.

3.4 *Tests.*

3.4.1 *Standards.* The error of the standards used must not exceed 25 percent of the MPE to be applied.

3.4.2 *Laboratory Tests.*

3.4.2.1 *Influence Quantity and Disturbance Tests.* Tests must be conducted according to annex A and the results of these tests must be within the values specified in section 3.2.1.1.

3.4.2.2 *Performance Tests.* Performance tests must be conducted as follows:

a. *Increasing load test.* At least five increasing load tests must be conducted with test loads at the minimum load, at a load near capacity, and at 2 or more critical points in between; and

b. *Decreasing load test.* A decreasing load test must be conducted with a test load approximately equal to one-half capacity when removing the test loads of an increasing load test.

3.4.3 *Annual Inspections.*

At least two increasing load tests and two decreasing load tests must be conducted as specified in 3.4.2.2. Additionally, tests must be conducted with test loads approximately equal to the weight of loads at which the scale is normally used.

4. Platform Scales and Hanging Scales

4.1 *Applicability.* The requirements in this section apply to platform and hanging scales used to weigh total catch. Platform scales used only as observer sampling scales or to determine the known weight of fish for a material test of another scale are not required to have a printer under sections 4.3.1 and 4.3.1.5 or an audit trail under section 4.3.1.8.

4.2 *Performance Requirements.*

4.2.1 *Maximum Permissible Errors.* For laboratory tests of a scale and initial inspection and annual reinspections of an installed scale while the vessel is tied up at a dock and is not under power at sea, the following MPEs are specified:

4.2.1.1 *Laboratory Tests.* See annex A to this appendix A for procedures for disturbance tests and influence factors.

a. *Disturbances.* Significant fault (±1 scale division); and

b. *Influence Factors.* See Table 1 in section 4.2.1.2.

4.2.1.2 *Increasing and Decreasing Load and Shift Tests.* Increasing and decreasing load and shift tests conducted in a laboratory or on a scale installed on a vessel while the vessel is tied up at a dock and is not under power at sea, see Table 1 as follows:

TABLE 1—INFLUENCE FACTORS

Test load in scale divisions (d)		Maximum permissible error (d)
Class III [1]	Class IIII	
$0 < m^2 \leq 500$	$0 < m \leq 50$	0.5

TABLE 1—INFLUENCE FACTORS—Continued

Test load in scale divisions (d)		Maximum permissible error (d)
Class III [1]	Class IIII	
500 < m ≤ 2000	50 < m ≤ 200	1.0
2000 < m	200 < m	1.5

[1] Scale accuracy classes are defined in section 4.2.2, table 2.

[2] Mass or weight of the test load in scale divisions.

4.2.2 *Accuracy Classes.* Scales are divided into two accuracy classes, class III and class IIII. The accuracy class of a scale is designated by the manufacturer. The design of each accuracy class with respect to number of scale divisions (n) and the value of the scale division (d) is specified according to table 2:

TABLE 2—ACCURACY CLASSES

Accuracy class	Value of scale division (d)	Number of scale divisions (n)	
		Minimum	Maximum
III	5 g or greater	500	10,000
IIII	5 g or greater	100	1,000

4.2.3 *Minimum Load:* For a Class III scale, 20d; for a Class IIII scale, 10d.

4.2.4 *Influence Quantities.* The following requirements apply to influence factor tests conducted in the laboratory.

4.2.4.1 *Temperature.* A scale must comply with the performance and technical requirements at temperatures from −10° C to +40° C. However, for special applications the temperature range may be different, but the range must not be less than 30° C and must be so specified on the descriptive markings.

4.2.4.1.1 *Operating Temperature.* A scale must not display or print any usable weight values until the operating temperature necessary for accurate weighing and a stable zero-balance condition have been attained.

4.2.4.2 *Power Supply.* A scale must comply with the performance and technical requirements when operated within −15 percent to +10 percent of the power supply specified on the scale's descriptive markings.

4.3 *Technical Requirements.*

4.3.1 *Indicators and Printers.*

4.3.1.1 *General.* A scale must be equipped with an indicator and a printer. The indications and printed information must be clear, definite, accurate, and easily read under all conditions of normal operation of the scale.

4.3.1.2 *Values Defined.* If indications or printed representations are intended to have specific values, these must be defined by a sufficient number of figures, words, or symbols, uniformly placed with reference to the indications or printed representations and as close as practicable to the indications or printed representations but not so positioned as to interfere with the accuracy of reading.

4.3.1.3 *Units.* The weight units indicated must be in terms of kilograms and decimal subdivisions.

4.3.1.4 *Value of the Scale Division.* The value of the scale division (d) expressed in a unit of weight must be equal to 1, 2, or 5, or a decimal multiple or sub-multiple of 1, 2, or 5.

4.3.1.5 *Printed Information.* The information printed must include—

a. For catch weight:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The haul or set number;

iv. Net weight of the fish.

b. For the audit trail:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The date and time (to the nearest minute) of the change;

iv. The name or type of adjustment being made; and

v. The initial and final values of the parameter being changed.

4.3.1.6 *Permanence of Markings.* All required indications, markings, and instructions must be distinct and easily readable and must be of such character that they will not tend to become obliterated or illegible.

4.3.1.7 *Power Loss.* In the event of a power failure, means must be provided to retain in a memory the weight of the last weighment if it is a non-repeatable weighment.

4.3.1.8 *Adjustable Components.*

a. An adjustable component that, when adjusted, affects the performance or accuracy of the scale must be held securely in position and must not be capable of adjustment without breaking a security means.

b. An audit trail in the form of an event logger must be provided to document changes made using adjustable components. The following information must be provided in an electronic form that cannot be changed or erased by the scale operator, can be printed at any time, and can be cleared by the scale manufacturer's representative upon direction of NMFS or an authorized scale inspector:

i. The date and time (to the nearest minute) of the change;

ii. The name or type of adjustment being made; and

iii. The initial and final values of the parameter being changed.

4.3.1.9 *Zero-Load Adjustment.* A scale must be equipped with a manual or semi-automatic means that can be used to adjust the zero-load balance or no-load reference value.

4.3.1.9.1 *Manual.* A manual means must be operable or accessible only by a tool outside of or entirely separate from this mechanism or enclosed in a cabinet.

4.3.1.9.2 *Semi-automatic.* A semi-automatic means must meet the provisions of 4.3.1.8 or

must be operable only when the indication is stable within ±1 scale division and cannot be operated during a weighing cycle (operation).

4.3.1.10 *Damping Means.* A scale must be equipped with effective automatic means to bring the indications quickly to a readable stable equilibrium. Effective automatic means must also be provided to permit the recording of weight values only when the indication is stable within plus or minus one scale division.

4.3.2 *Weighing Elements.*

4.3.2.1 *Overload Protection.* The scale must be so designed that an overload of 150 percent or more of the capacity does not affect the metrological characteristics of the scale.

4.3.2.2 *Adjustable Components.* An adjustable component that can affect the performance of the scale must be held securely in position and must not be capable of adjustment without breaking a security means.

4.3.2.3 *Motion Compensation.* A platform scale must be equipped with automatic means to compensate for the motion of a vessel at sea so that the weight values indicated are within the MPEs. Such means shall be a reference load cell and a reference mass weight or other equally effective means. When equivalent means are utilized, the manufacturer must provide NMFS with information demonstrating that the scale can weigh accurately at sea.

4.3.3 *Installation Conditions.* A platform scale must be rigidly installed in a level condition. When in use, a hanging scale must be freely suspended from a fixed support or a crane.

4.3.4 *Marking.* A scale must be marked with the following:

a. Name, initials, or trademark of the manufacturer or distributor;

b. Model designation;

c. Non-repetitive serial number;

d. Accuracy class (III or IIII);

e. Maximum capacity (Max);

f. Minimum capacity (min);

g. Value of a scale division (d);

h. Temperature range (if applicable); and

i. Mains voltage.

4.3.4.1 *Presentation.* Descriptive markings must be reasonably permanent and grouped together in a place visible to the operator.

4.4 *Tests.*

4.4.1 *Standards.* The error of the standards used must not exceed 25 percent of the MPE applied.

4.4.2 *Laboratory Tests.*

4.4.2.1 *Influence Quantities and Disturbance Tests.* Tests must be conducted according to annex A to this appendix A, and the results of these tests must be within the values specified in section 4.2.1.1.

4.4.2.2 *Performance Tests.* Performance tests must be conducted as follows:

a. *Increasing load test.* At least five increasing load tests must be conducted with test loads at the minimum load, at a load near capacity, and at 2 or more critical points in between.

b. *Shift test (platform scales only).* A shift test must be conducted during the increasing load test at one-third capacity test load centered in each quadrant of the platform.

c. *Decreasing load test.* A decreasing load test must be conducted with a test load approximately equal to one-half capacity when removing the test loads of an increasing load test.

4.4.3 *Annual Scale Inspections.*

At least two increasing load tests, shift tests, and decreasing load tests must be conducted as specified in section 4.4.2.2. Additionally tests must be conducted with test loads approximately equal to the weight of loads at which the scale is normally used. The results of all tests must be as specified in Table 1 in section 4.2.1.2.

5. Definitions

Adjustable component—Any component that, when adjusted, affects the performance or accuracy of the scale, e.g., span adjustment or automatic zero-setting means. Manual or semi-automatic zero-setting means are not considered adjustable components.

Audit trail—An electronic count and/or information record of the changes to the values of the calibration or configuration parameters of a scale.

Automatic hopper scale—A hopper scale adapted to the automatic weighing of a bulk commodity (fish) in predetermined amounts. Capacities vary from 20 kg to 50 mt. It is generally equipped with a control panel, with functions to be set by an operator, including the start of an automatic operation. (See definition of hopper scale).

Belt scale—A scale that employs a conveyor belt in contact with a weighing element to determine the weight of a bulk commodity being conveyed. It is generally a part of a system consisting of an input conveyor, the flow scale, and an output conveyor. The conveyor belt may be constructed of various materials, including vulcanized rubber, canvas, and plastic. The capacity is generally specified in terms of the amount of weight that can be determined in a specified time, and can vary from, for example, 1 ton per hour to 100 or more tons per hour. An operator generally directs the flow of product onto the input conveyor.

Calibration mode—A means by which the span of a scale can be adjusted by placing a known ''test weight'' on the scale and manually operating a key on a key board.

Disturbances—An influence that may occur during the use of a scale but is not within the rated operating conditions of the scale.

Event logger—A form of audit trail containing a series of records where each record contains the identification of the parameter that was changed, the time and date when

the parameter was changed, and the new value of the parameter.

Final weighment—The last partial load weighed on a hopper scale that is part of the weight of many loads.

Hanging scale—A scale that is designed to weigh a load that is freely suspended from an overhead crane or it may be permanently installed in an overhead position. The load receiver may be a part of the scale such as a pan suspended on chains, or simply a hook that is used to ''pick-up'' the container of the commodity to be weighed. The technology employed may be mechanical, electro-mechanical, or electronic. The loads can be applied either manually or by such means as a crane.

Hopper scale—A scale designed for weighing individual loads of a bulk commodity (fish). The load receiver is a cylindrical or rectangular container mounted on a weighing element. The weighing element may be mechanical levers, a combination of levers and a load cell, or all load cells. The capacity can vary from less than 20 kg to greater than 50 mt. The loads are applied from a bulk source by such means as a conveyor or storage hopper. Each step of the weighing process, that is the loading and unloading of the weigh hopper, is controlled by an operator.

Indicator—That part of a scale that indicates the quantity that is being weighed.

Influence factor—A value of an influence quantity, e.g., 10°, that specifies the limits of the rated operating conditions of the scale.

Influence quantity—A quantity that is not the subject of the measurement but which influences the measurement obtained within the rated operating conditions of the scale.

Influence quantity and disturbance tests—Tests conducted in a laboratory to determine the capability of the scale under test to perform correctly in the environmental influences in which they are used and when subjected to certain disturbances that may occur during the use of the scale.

Initial verification—The first evaluation (inspection and test) of a production model of a weighing instrument that has been type evaluated to determine that the production model is consistent with the model that had been submitted for type evaluation.

Known weight test—A test in which the load applied is a test weight with a known value simulating the weight of the material that is usually weighed.

Load receiver—That part of the scale in which the quantity is placed when being weighed.

Material test—A test using a material that is the same or similar to the material that is usually weighed, the weight of which has been determined by a scale other than the scale under test.

Maximum flow-rate—The maximum flow-rate of material specified by the manufacturer at which a belt scale can perform correctly.

Minimum flow-rate—The minimum flow-rate specified by the manufacturer at which a belt scale can perform correctly.

Minimum load—The smallest weight load that can be determined by the scale that is considered to be metrologically acceptable.

Minimum totalized load—The smallest weight load that can be determined by a belt scale that is considered to be metrologically acceptable.

Minimum weighment—The smallest weight that can be determined by a hopper scale that is considered to be metrologically acceptable.

Motion compensation—The means used to compensate for the motion of the vessel at sea.

No-load reference value—A weight value obtained by a hopper scale when the load receiver (hopper) is empty of the product that was or is to be weighed.

Non-repeatable weighment—A process where the product after being weighed is disposed of in such a manner that it cannot be retrieved to be reweighed.

Number of scale divisions (n)—The number of scale divisions of a scale in normal operation. It is the quotient of the scale capacity divided by the value of the scale division. n=Max/d

Performance requirements—A part of the regulations or standards that applies to the weighing performance of a scale, e.g., MPEs.

Performance test—A test conducted to determine that the scale is performing within the MPE applicable.

Periodic verification—A verification of a weighing instrument at an interval that is specified by regulation or administrative ruling.

Platform scale—A scale by the nature of its physical size, arrangement of parts, and relatively small capacity (generally 220 kg or less) that is adapted for use on a bench or counter or on the floor. A platform scale can be self contained, that is, the indicator and load receiver and weighing elements are all comprised of a single unit, or the indicator can be connected by cable to a separate load receiver and weighing element. The technology used may be mechanical, electro-mechanical, or electronic. Loads are applied manually.

Rated capacity—The maximum flow-rate in terms of weight per unit time specified by the manufacturer at which a belt scale can perform correctly.

Scale division (d)—The smallest digital subdivision in units of mass that is indicated by the weighing instrument in normal operation.

Sealing—A method used to prevent the adjustment of certain operational characteristics or to indicate that adjustments have

been made to those operational characteristics.

Security seals or means—A physical seal such as a lead and wire seal that must be broken in order to change the operating or performance characteristics of the scale, or a number generated by the scale whenever a change is made to an adjustable component. The number must be sequential and it must not be possible for the scale operator to alter it. The number must be displayed whenever the scale is turned on.

Significant fault—An error greater than the value specified for a particular scale. For a belt scale: A fault greater than 0.18 percent of the weight value equal to the minimum totalized load. For all other scales: 1 scale division (d). A significant fault does not include faults that result from simultaneous and mutually independent causes in the belt scale; faults that imply the impossibility of performing any measurement; transitory faults that are momentary variations in the indications that cannot be interpreted, memorized, or transmitted as a measurement result; faults so serious that they will inevitably be noticed by those interested in the measurement.

Simulated material test—A test in which the load applied is test material simulating the weight of the material that is usually weighed.

Simulated test—A test in which the weight indications are developed by means other than weight, e.g., a load cell simulator.

Stationary installation—An installation of a scale in a facility on land or a vessel that is tied-up to a dock or in dry dock.

Subsequent verification—Any evaluation of a weighing instrument following the initial verification.

Suitability for use—A judgement that must be made that certain scales by nature of their design are appropriate for given weighing applications.

Technical requirements—A part of the regulations or standards that applies to the operational functions and characteristics of a scale, e.g., capacity, scale division, tare.

Testing laboratory—A facility for conducting type evaluation examinations of a scale that can establish its competency and proficiency by such means as ISO Guide 25, ISO 9000, EN 45011, NVLAP, NTEP.

Type evaluation—A process for evaluating the compliance of a weighing instrument with the appropriate standard or regulation.

User requirements—A part of the regulations or standards that applies to the operator/owner of the scale.

Weighment—A single complete weighing operation.

ANNEX A TO APPENDIX A TO PART 679—INFLUENCE QUANTITY AND DISTURBANCE TESTS

A.1 General—Included in this annex are tests that are intended to ensure that electronic scales can perform and function as intended in the environment and under the conditions specified. Each test indicates, where appropriate, the reference condition under which the intrinsic error is determined.

A.2 *Test Considerations*

A.2.1 All electronic scales of the same category must be subjected to the same performance test program.

A.2.2 Tests must be carried out on fully operational equipment in its normal operational state. When equipment is connected in other than a normal configuration, the procedure must be mutually agreed to by NMFS and the applicant.

A.2.3 When the effect of one factor is being evaluated, all other factors must be held relatively constant, at a value close to normal. The temperature is deemed to be relatively constant when the difference between the extreme temperatures noted during the test does not exceed 5° C and the variation over time does not exceed 5° C per hour.

A.2.4 Before the start of a test, the equipment under test (EUT) must be energized for a period of time at least equal to the warm-up time specified by the manufacturer. The EUT must remain energized throughout the duration of the test.

A.3 Tests

Test	Characteristics under test	Conditions applied
A.3.1 Static temperatures	Influence factor	MPE
A.3.2 Damp heat, steady state	Influence factor	MPE
A.3.3 Power voltage variation	Influence factor	MPE
A.3.4 Short time power reduction	Disturbance	sf
A.3.5 Bursts	Disturbance	sf
A.3.6 Electrostatic discharge	Disturbance	sf
A.3.7 Electromagnetic susceptibility	Disturbance	sf

A.3 Tests

A.3.1 Static Temperatures

Test method: Dry heat (non condensing) and cold.

Object of the test: To verify compliance with the applicable MPE under conditions of high and low temperature.

Reference to standard: See Bibliography (1).

Test procedure in brief: The test consists of exposure of the EUT to the high and low temperatures specified in section 2.2.4.1 for belt scales, section 3.2.4.1 for automatic hopper scales, and section 4.2.3.1 for platform scales and hanging scales, under ''free air'' condition for a 2-hour period after the EUT has reached temperature stability. The EUT must be tested during a weighing operation consisting of:

For belt scales—the totalization of the Σ_{min}, 2 times each at approximately the minimum flow rate, an intermediate flow rate, and the maximum flow rate.

For platform, hanging, and automatic hopper scales—tested with at least five different test loads or simulated loads under the following conditions:

a. At a reference temperature of 20° C following conditioning.

b. At the specified high temperature, 2 hours after achieving temperature stabilization.

c. At the specified low temperature, 2 hours after achieving temperature stabilization.

d. At a temperature of 5° C, 2 hours after achieving temperature stabilization.

e. After recovery of the EUT at the reference temperature of 20° C.

Test severities: Duration: 2 hours.

Number of test cycles: At least one cycle.

Maximum allowable variations:

a. All functions must operate as designed.

b. All indications must be within the applicable MPEs.

Conduct of test: Refer to the International Electrotechnical Commission (IEC) Publications mentioned in section A.4 Bibliography (a) for detailed test procedures.

Supplementary information to the IEC test procedures.

Preconditioning: 16 hours.

Condition of EUT: Normal power supplied and ''on'' for a time period equal to or greater than the warm-up time specified by the manufacturer. Power is to be ''on'' for the duration of the test. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test Sequence:

a. Stabilize the EUT in the chamber at a reference temperature of 20° C. Conduct the tests as specified in the test procedure in brief and record the following data:

i. Date and time,
ii. Temperature,
iii. Relative humidity,
iv. Test load,
v. Indication,
vi. Errors, and
vii. Functions performance.

b. Increase the temperature in the chamber to the high temperature specified. Check by measurement that the EUT has reached temperature stability and maintain the temperature for 2 hours. Following the 2 hours, repeat the tests and record the test data indicated in this A.3.1 Test Sequence section.

c. Reduce the temperature in the chamber as per the IEC procedures to the specified low temperature. After temperature stabilization, allow the EUT to soak for 2 hours. Following the 2 hours, repeat the tests and record the test data as indicated in this A.3.1 Test Sequence section.

d. Raise the temperature in the chamber as per the IEC procedures to 5° C. After temperature stabilization, allow the EUT to soak for 2 hours. Following the 2 hours, repeat the tests and record the test data as indicated in this A.3.1 Test Sequence section. NOTE: This test relates to a −10° C to +40° C range. For special ranges, it may not be necessary.

e. Raise the temperature in the chamber as per the IEC procedures and to the 20° C reference temperature. After recovery, repeat the tests and record the test data as indicated in this A.3.1 Test Sequence section.

A.3.2 Damp Heat, Steady State

Test method: Damp heat, steady state.

Object of the test: To verify compliance with the applicable MPE under conditions of high humidity and constant temperature.

Reference to standard: See section A.4 Bibliography (b)

Test procedure in brief: The test consists of exposure of the EUT to a constant temperature at the upper limit of the temperature range and of a constant relative humidity of 85 percent for a 2-day period. The EUT must be tested during a weighing operation consisting of the following:

For belt scales—the totalization of the Σ_{min}, 2 times each at approximately the minimum flow rate, an intermediate flow rate, and the maximum flow rate.

For platform, hanging, and automatic hopper scales—tested with at least five different test loads or simulated loads at a reference temperature of 20° C and a relative humidity of 50 percent following conditioning, and at the upper limit temperature and a relative humidity of 85 percent 2 days following temperature and humidity stabilization.

Test severities:

Temperature: upper limit.
Humidity: 85 percent (non-condensing).
Duration: 2 days.
Number of test cycles: At least one test.

Maximum Allowable Variations:

a. All functions must operate as designed.

b. All indications must be within the applicable MPE.

Conduct of the test: Refer to the IEC Publications mentioned in section A.4 Bibliography (b) for detailed test procedures.

Supplementary information to the IEC test procedures.

Preconditioning: None required.

Condition of EUT:

a. Normal power supplied and ''on'' for a time period equal to or greater than the warm-up time specified by the manufacturer. Power is to be ''on'' for the duration of the test.

b. The handling of the EUT must be such that no condensation of water occurs on the EUT.

c. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test Sequence:

a. Allow 3 hours for stabilization of the EUT at a reference temperature of 20° C and a relative humidity of 50 percent. Following stabilization, conduct the tests as specified in the test procedures in brief and record the following data:

i. Date and time,
ii. Temperature,
iii. Relative humidity,
iv. Test load,
v. Indication,
vi. Errors, and
vii. Functions performance.

b. Increase the temperature in the chamber to the specified high temperature and a relative humidity of 85 percent. Maintain the EUT at no load for a period of 2 days. Following the 2 days, repeat the tests and record the test data as indicated in this A.3.2 Test Sequence section.

c. Allow full recovery of the EUT before any other tests are performed.

A.3.3 *Power Voltage Variation*

A.3.3.1 *AC Power Supply*

Test method: Variation in AC mains power supply (single phase).

Object of the test: To verify compliance with the applicable MPEs under conditions of varying AC mains power supply.

Reference to standard: See section A.4 Bibliography (c).

Test procedure in brief: The test consists of subjecting the EUT to AC mains power during a weighing operation consisting of the following:

For belt scales—while totalizing the Σ_{min} at the maximum flow rate.

For platform, hanging, and automatic hopper scales—at no load and a test load between 50 percent and 100 percent of weighing capacity.

Test severities: Mains voltage:

Upper limit U (nom) +10 percent.

Lower limit U (nom) −15 percent.

Number of test cycles: At least one cycle.

Maximum allowable variations:

a. All functions must operate correctly.

b. All indications must be within MPEs specified in sections 2, 3, or 4 of this appendix to part 679.

Conduct of the test:

Preconditioning: None required.

Test equipment:

a. Variable power source,
b. Calibrated voltmeter, and
c. Load cell simulator, if applicable.

Condition of EUT:

a. Normal power supplied and ''on'' for a time period equal to or greater than the warm-up time specified by the manufacturer.

b. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test sequence:

a. Stabilize the power supply at nominal voltage ±2 percent.

b. Conduct the tests specified in the test procedure in brief and record the following data:

i. Date and time,
ii. Temperature,
iii. Relative humidity,
iv. Power supply voltage,
v. Test load,
vi. Indications,
vii. Errors, and
viii. Functions performance.

c. Reduce the power supply to −15 percent nominal.

d. Repeat the test and record the test data as indicated in this A.3.3 Test Sequence section.

e. Increase the power supply to +10 percent nominal.

f. Repeat the test and record the test data as indicated in this A.3.3 Test Sequence section.

g. Unload the EUT and decrease the power supply to nominal power ±2 percent.

h. Repeat the test and record the test data as indicated in this A.3.3 Test Sequence section.

Note: In case of three-phase power supply, the voltage variation must apply for each phase successively. Frequency variation applies to all phases simultaneously.

A.3.3.2 *DC Power Supply*

Under consideration.

A.3.4 *Short Time Power Reduction*

Test method: Short time interruptions and reductions in mains voltage.

Object of the test: To verify compliance with the applicable significant fault under conditions of short time mains voltage interruptions and reductions.

Reference to standard: See section A.4 Bibliography (d) IEC Publication 1000–4–11 (1994).

Test procedure in brief: The test consists of subjecting the EUT to voltage interruptions from nominal voltage to zero voltage for a

period equal to 8–10 ms, and from nominal voltage to 50 percent of nominal for a period equal to 16–20 ms. The mains voltage interruptions and reductions must be repeated ten times with a time interval of at least 10 seconds. This test is conducted during a weighing operation consisting of the following:

For belt scales—while totalizing at the maximum flow rate at least the Σ_{min} (or a time sufficient to complete the test).

For platform, hanging, and automatic hopper scales—tested with one small test load or simulated load.

Test severities: One hundred percent voltage interruption for a period equal to 8–10 ms. Fifty percent voltage reduction for a period equal to 16–20 ms.

Number of test cycles: Ten tests with a minimum of 10 seconds between tests.

Maximum allowable variations: The difference between the weight indication due to the disturbance and the indication without the disturbance either must not exceed 1d or the EUT must detect and act upon a significant fault.

Conduct of the Test:

Preconditioning: None required.

Test equipment:

a. A test generator suitable to reduce the amplitude of the AC voltage from the mains. The test generator must be adjusted before connecting the EUT.

b. Load cell simulator, if applicable.

Condition of EUT:

a. Normal power supplied and ''on'' for a time period equal to or greater than the warm-up time specified by the manufacturer.

b. Adjust the EUT as close to zero indication as practicable prior to the test.

Test sequence:

a. Stabilize all factors at nominal reference conditions.

b. Totalize as indicated in this A.3.4 Test Sequence section and record the—

i. Date and time,

ii. Temperature,

iii. Relative humidity,

iv. Power supply voltage,

v. Test load,

vi. Indications,

vii. Errors, and

viii. Functions performance.

c. Interrupt the power supply to zero voltage for a period equal to 8–10 ms. During interruption observe the effect on the EUT and record, as appropriate.

d. Repeat the steps four times in this A.3.4 Test Sequence section, making sure that there is a 10 second interval between repetitions. Observe the effect on the EUT.

e. Reduce the power supply to 50 percent of nominal voltage for a period equal to 16–20 ms. During reduction observe the effect on the EUT and record, as appropriate.

f. Repeat the steps four times in this A.3.4 Test Sequence section, making sure that there is a 10 second interval between repetitions. Observe the effect on the EUT.

A.3.5 *Bursts*

Test method: Electrical bursts.

Object of the test: To verify compliance with the provisions in this manual under conditions where electrical bursts are superimposed on the mains voltage.

Reference to standard: See section A.4 Bibliography (e)

Test Procedure in brief:

The test consists of subjecting the EUT to bursts of double exponential wave-form transient voltages. Each spike must have a rise in time of 5 ns and a half amplitude duration of 50 ns. The burst length must be 15 ms, the burst period (repetition time interval) must be 300 ms. This test is conducted during a weighing operation consisting of the following:

For belt scales—while totalizing at the maximum flow rate at least the Σ_{min} (or a time sufficient to complete the test).

For platform, hanging, and automatic hopper scales—tested with one small test load or simulated load.

Test severities: Amplitude (peak value) 1000 V.

Number of test cycles: At least 10 positive and 10 negative randomly phased bursts must be applied at 1000 V.

Maximum allowable variations: The difference between the indication due to the disturbance and the indication without the disturbance either must not exceed the values given in sections 2.2.1.1b., 3.2.1.1b., and 4.2.1.1b, of this appendix, or the EUT must detect and act upon a significant fault.

Conduct of the test: Refer to the IEC Publication referenced in section A.4 Bibliography (e) for detailed test procedures.

Supplementary information to the IEC test procedures:

Test equipment:

A burst generator having an output impedance of 50 ohms.

Test conditions:

The burst generator must be adjusted before connecting the EUT. The bursts must be coupled to the EUT both on common mode and differential mode interference.

Condition of EUT:

a. Normal power supplied and ''on'' for a time period equal to or greater than the warm-up time specified by the manufacturer.

b. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test Sequence:

a. Stabilize all factors at nominal reference conditions.

b. Conduct the test as indicated in this A.3.5 Test Sequence section and record the—

i. Date and time,

ii. Temperature,

iii. Relative humidity,

iv. Test load,

v. Indication,

vi. Errors, and

vii. Functions performance.

c. Subject the EUT to at least 10 positive and 10 negative randomly phased bursts at the 1000 V mode. Observe the effect on the EUT and record, as appropriate.

d. Stabilize all factors at nominal reference conditions.

e. Repeat the test and record the test data as indicated in this A.3.5 Test Sequence section.

A.3.6 *Electrostatic Discharge*

Test method: Electrostatic discharge (ESD).

Object of the test: To verify compliance with the provisions of this manual under conditions of electrostatic discharges.

Reference to standard: See section A.4 Bibliography (f)

Test procedure in brief:

A capacitor of 150 pF is charged by a suitable DC voltage source. The capacitor is then discharged through the EUT by connecting one terminal to ground (chassis) and the other via 150 ohms to surfaces which are normally accessible to the operator. This test is conducted during a weighing operation consisting of the following:

For belt scales—while totalizing at the maximum flow rate at least the Σ_{min} (or a time sufficient to complete the test).

For platform, hanging, and automatic hopper scales—test with one small test load or simulated load.

Test severities

Air Discharge: up to and including 8 kV.

Contact Discharge: up to and including 6 kV.

Number of test cycles: At least 10 discharges must be applied at intervals of at least 10 seconds between discharges.

Maximum allowable variations:

The difference between the indication due to the disturbance and the indication without the disturbance either must not exceed the values indicated in sections 2.2.1.1 b., 3.2.1.1 b., and 4.2.1.1 b. of this appendix, or the EUT must detect and act upon a significant fault.

Conduct of the test: Refer to the IEC Publication mentioned in section A.4 Bibliography (d) for detailed test procedures.

Supplementary information to the IEC test procedures.

Preconditioning: None required.

Condition of EUT:

a. The EUT without a ground terminal must be placed on a grounded plate which projects beyond the EUT by at least 0.1 m on all sides. The ground connection to the capacitor must be as short as possible.

b. Normal power supplied and ''on'' for a time period equal to or greater than the warm-up time specified by the manufacturer. Power is to be ''on'' for the duration of the test.

c. The EUT must be operating under standard atmospheric conditions for testing.

d. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test sequence:

a. Stabilize all factors at nominal reference conditions.

b. Conduct test as indicated in this A.3.6 Test Sequence section and record the—

i. Date and time,

ii. Temperature,

iii. Relative humidity,

iv. Power supply voltage,

v. Test load,

vi. Indication,

vii. Errors, and

viii. Functions performance.

c. Approach the EUT with the discharge electrode until discharge occurs and then remove it before the next discharge. Observe the effect of the discharge on the EUT and record, as appropriate.

d. Repeat the above step at least nine times, making sure to wait at least 10 seconds between successive discharges. Observe the effect on the EUT and record as appropriate.

e. Stabilize all factors at nominal reference conditions.

f. Repeat the test and record the test data as indicated in this A.3.6 Test Sequence section.

A.3.7 *Electromagnetic Susceptibility*

Test method: Electromagnetic fields (radiated).

Object of the Test:

To verify compliance with the provisions in this manual under conditions of electromagnetic fields.

Reference to standard: See section A.4 Bibliography (g).

Test procedure in brief:

a. The EUT is placed in an EMI chamber and tested under normal atmospheric conditions. This test is first conducted at one load

in a static mode, and the frequencies at which susceptibility is evident are noted. Then tests are conducted at the problem frequencies, if any, during a weighing operation consisting of the following:

For belt scales—while totalizing at the maximum flow rate at least the Σ_{min} (or a time sufficient to complete the test). It is then exposed to electromagnetic field strengths as specified in the Test severities in this section A.3.7 of this annex to appendix A of this part.

For platform, hanging, and automatic hopper scales—tested with one small test load.

b. The field strength can be generated in various ways:

i. The strip line is used at low frequencies (below 30 MHz or in some cases 150 MHz) for small EUT's;

ii. The long wire is used at low frequencies (below 30 MHz) for larger EUT's;

iii. Dipole antennas or antennas with circular polarization placed 1 m from the EUT are used at high frequencies.

c. Under exposure to electromagnetic fields the EUT is again tested as indicated above.

Test severities: Frequency range: 26–1000 MHz.

Field strength: 3 V/m.

Modulation: 80 percent AM, 1 kHz sine wave.

Number of test cycles: Conduct test by continuously scanning the specified frequency range while maintaining the field strength.

Maximum allowable variations: The difference between the indication due to the disturbance and the indication without the disturbance either must not exceed the values given in this manual, or the EUT must detect and act upon a significant fault.

Conduct of the test: Refer to the IEC Publication referenced in section A.4 Bibliography (g) for detailed information on test procedures.

Supplementary information to the IEC test procedures.

Test conditions:

a. The specified field strength must be established prior to the actual testing (without the EUT in the field). At least 1 m of all external cables must be included in the exposure by stretching them horizontally from the EUT.

b. The field strength must be generated in two orthogonal polarizations and the frequency range scanned slowly. If antennas with circular polarization, *i.e.,* log-spiral or helical antennas, are used to generate the electromagnetic field, a change in the position of the antennas is not required. When the test is carried out in a shielded enclosure to comply with international laws prohibiting interference to radio communications, care needs to be taken to handle reflections from the walls. Anechoic shielding might be necessary.

Condition of EUT:

a. Normal power supplied and ''on'' for a time period equal to or greater than the warm-up time specified by the manufacturer. Power is to be ''on'' for the duration of the test. The EUT must be operating under standard atmospheric conditions for testing.

b. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test sequence:

a. Stabilize all factors at nominal reference conditions.

b. Conduct the test as indicated in this A.3.7 Test Sequence section and record the—

i. Date and time,

ii. Temperature,

iii. Relative humidity,

iv. Test load,

v. Indication,

vi. Errors, and

vii. Functions performance.

c. Following the IEC test procedures, expose the EUT at zero load to the specified field strengths while slowly scanning the three indicated frequency ranges.

d. Observe and record the effect on the EUT.

e. Repeat the test and observe and record the effect.

f. Stabilize all factors at nominal reference conditions.

g. Repeat the test and record the test data.

A.4 Bibliography

Below are references to Publications of the International Electrotechnical Commission (IEC), where mention is made in the tests in annex A to appendix A of this part.

a. IEC Publication 68–2–1 (1974): Basic environmental testing procedures. Part 2: Tests, Test Ad: Cold, for heat dissipating equipment under test (EUT), with gradual change of temperature.

IEC Publication 68–2–2 (1974): Basic environmental testing procedures, Part 2: Tests, Test Bd: Dry heat, for heat dissipating equipment under test (EUT) with gradual change of temperature.

IEC Publication 68–3–1 (1974): Background information, Section 1: Cold and dry heat tests.

b. IEC Publication 68–2–56 (1988): Environmental testing, Part 2: Tests, Test Cb: Damp heat, steady state. Primarily for equipment.

IEC Publication 68–2–28 (1980): Guidance for damp heat tests.

c. IEC Publication 1000–4–11 (1994): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques, Section 11. Voltage dips, short interruptions and voltage variations immunity tests. Section 5.2 (Test levels—Voltage variation). Section 8.2.2 (Execution of the test-voltage variation).

d. IEC Publication 1000–4–11 (1994): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques, Section 11:

Voltage dips, short interruptions and voltage variations immunity tests. Section 5.1 (Test levels—Voltage dips and short interruptions. Section 8.2.1 (Execution of the test-voltage dips and short interruptions) of the maximum transit speed and the range of operating speeds.

e. IEC Publication 1000–4–4 (1995): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques—Section 4: Electrical fast transient/burst immunity test. Basic EMC publication.

f. IEC Publication 1000–4–2 (1995): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques—Section 2: Electrostatic discharge immunity test. Basic EMC Publication.

g. IEC Publication 1000–4–3 (1995): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques—Section 3: Radiated, radio-frequency electromagnetic field immunity test.

[63 FR 5845, Feb. 4, 1998, as amended at 65 FR 33783, May 25, 2000]

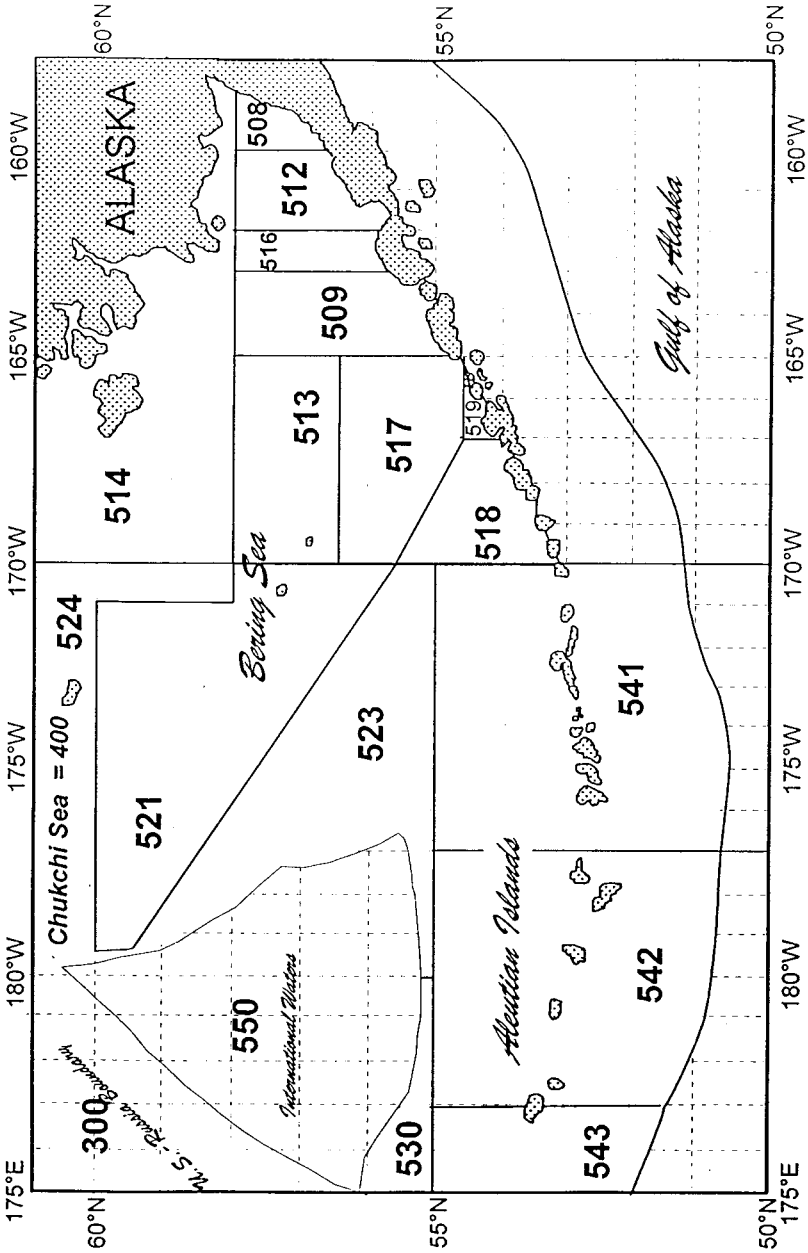

Figure 1 to Part 679. Bering Sea and Aleutian Islands statistical and reporting areas

a. Map

FIGURE 1 TO PART 679—BSAI STATISTICAL AND REPORTING AREAS

b. COORDINATES

Code	Description
300	*Russian waters.* Those waters inside the Russian 200 mile limit as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart INT 814 Bering Sea (Northern Part).
400	*Chukchi Sea.* North of a diagonal line between 66°00′ N, 169° 42.5′ W (Cape Dezhneva, Russia); and 65°37.5′ N, 168°7.5′ W (Cape Prince of Wales, Alaska) and to the limits of the U.S. EEZ as described in the current edition of NOAA chart INT 814 Bering Sea (Northern Part).
508	South of 58°00′ N between the intersection of 58°00′ N lat with the Alaska Peninsula and 160°00′ W long.
509	South of 58°00′ N lat between 163°00′ W long and 165°00′ W long.
512	South of 58°00′ N lat, north of the Alaska Peninsula between 160°00′ W long and 162°00′ W long.
513	Between 58°00′ N lat and 56°30′ N lat, and between 165°00′ W long and 170°00′ W long.
514	North of 58°00′ N to the southern boundary of the Chukchi Sea, area 400, and east of 170°00′ W long.
516	South of 58°00′ N lat, north of the Alaska Peninsula, and between 162°00′ and 163°00′ W long.
517	South of 56°30′ N lat, between 165°00′ W long and 170°00′ W long; and north of straight lines between 54°30′ N lat, 165°00′ W long, 54°30′ N lat, 167°00′ W long, and 55°46′ N lat, 170°00′ W long.
518	*Bogoslof District:* South of a straight line between 55°46′ N lat, 170°00′ W long and 54°30′ N lat, 167°00′ W long, and between 167°00′ W long and 170°00′ W long, and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 52°49.18′ N, 169°40.47′ W, 52°49.24′ N, 169°07.10′ W, 53°23.13′ N, 167°50.50′ W, 53°18.95′ N, 167°51.06′ W.
519	South of a straight line between 54°30′ N lat, 167°00′ W long and 54°30′ N lat, 164°54′ W long; east of 167°00′ W long; west of Unimak Island; and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 53°58.97′ N, 166°16.50′ W, 54°02.69′ N, 166°02.93′ W, 54°07.69′ N, 165°39.74′ W, 54°08.40′ N, 165°38.29′ W, 54°11.71′ N, 165°23.09′ W, 54°23.74′ N, 164°44.73′ W.
521	The area bounded by straight lines connecting the following coordinates in the order listed: 55°46′ N, 170°00′ W, 59°25′ N, 179°20′ W, 60°00′ N, 179°20′ W, 60°00′ N, 171°00′ W, 58°00′ N, 171°00′ W, 58°00′ N, 170°00′ W, 55°46′ N, 170°00′ W.
523	The area bounded by straight lines connecting the following coordinates in the order listed: 59°25′ N, 179°20′ W, 55°46′ N, 170°00′ W, 55°00′ N, 170°00′ W, 55°00′ N, 180°00′ W, and north to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
524	The area west of 170°00′ W bounded south by straight lines connecting the following coordinates in the order listed: 58°00′ N, 170°00′ W, 58°00′ N, 171°00′ W, 60°00′ N, 171°00′ W, 60°00′ N, 179°20′ W, 59°25′ N, 179°20′ W, and to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
530	The area north of 55°00 N lat and west of 180°00 W long to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
541	*Eastern Aleutian District.* The area south of 55°00′ N lat, west of 170°00′ W long, and east of 177°00′ W long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
542	*Central Aleutian District.* The area south of 55°00′ N lat, west of 177°00′ W long, and east of 177°00′ E long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
543	*Western Aleutian District.* The area south of 55°00′ N lat and west of 177°00′ E long, and bounded on the south and west by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
550	*Donut Hole.* International waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).

Note: A statistical area is the part of a reporting area contained in the EEZ.

[64 FR 61983, Nov. 15, 1999; 65 FR 25290, May 1, 2000]

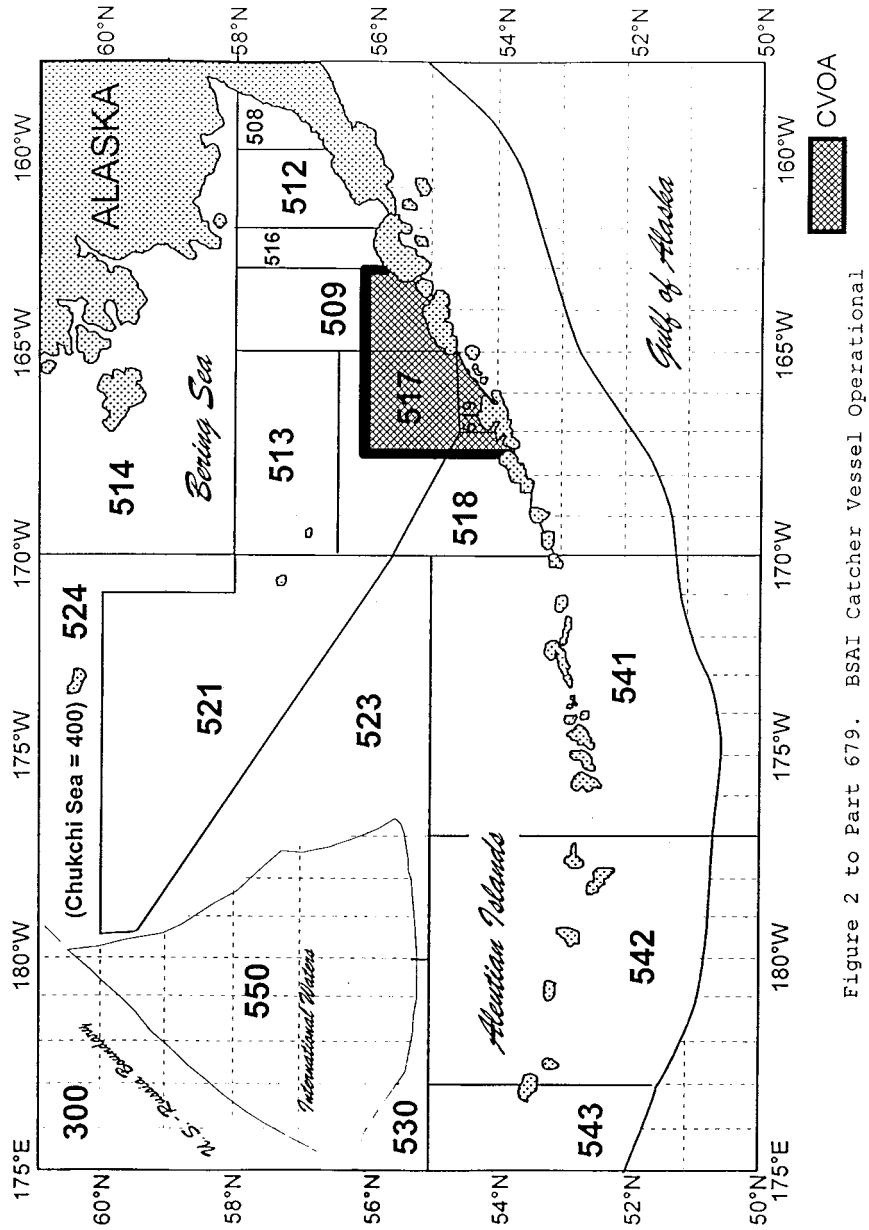

Figure 2 to Part 679. BSAI Catcher Vessel Operational Area (CVOA) (South of 56°00' N lat between 163°00' W and 167°30' W long)

[64 FR 61985, Nov. 15, 1999]

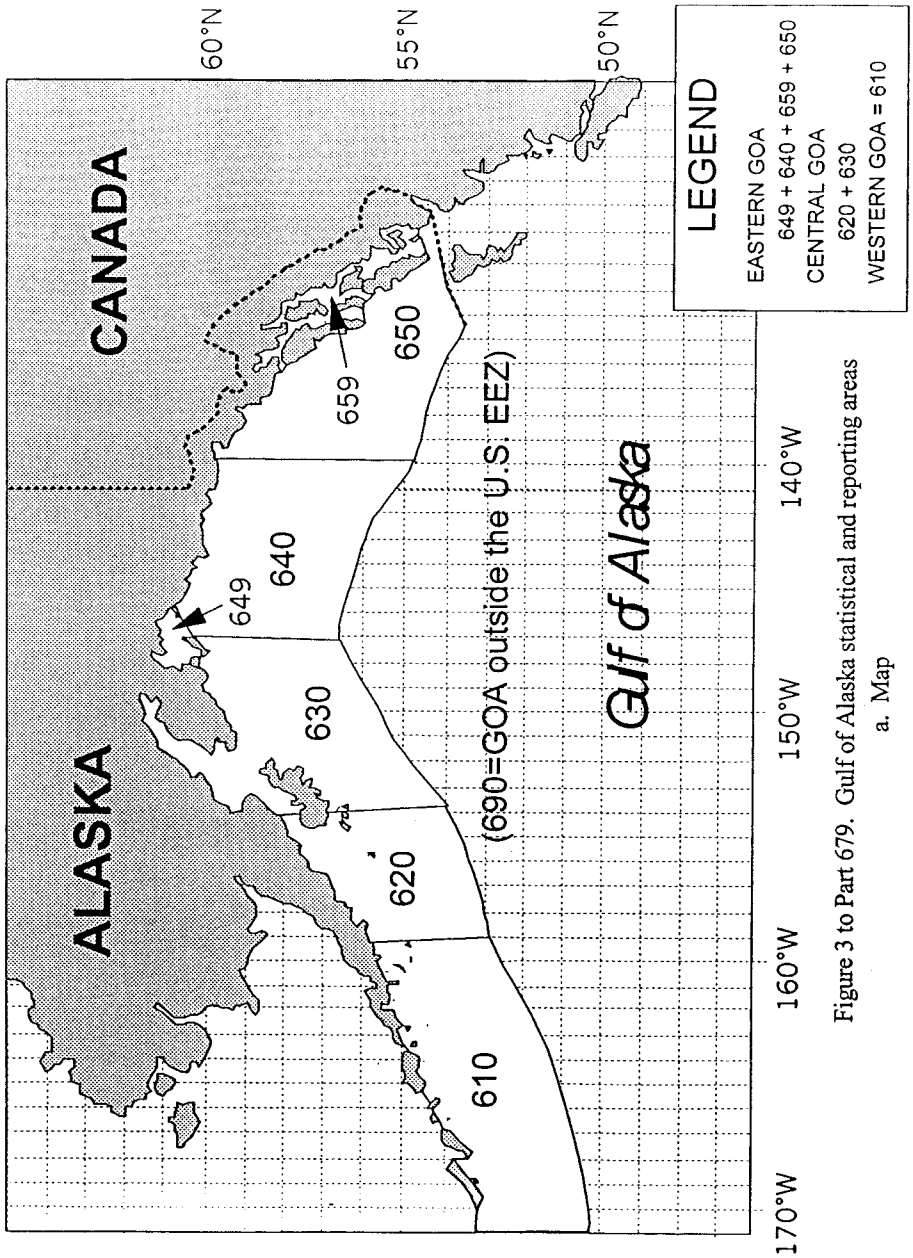

Figure 3 to Part 679. Gulf of Alaska statistical and reporting areas

a. Map

FIGURE 3 TO PART 679—GULF OF ALASKA STATISTICAL AND REPORTING AREAS

b.COORDINATES

Code	Description
610	*Western Regulatory Area, Shumagin District.* Along the south side of the Aleutian Islands, including those waters south of Nichols Point (54°51′ 30″ N lat) near False Pass, and straight lines between the islands and the Alaska Peninsula connecting the following coordinates in the order listed: 52°49.18′ N, 169°40.47′ W; 52°49.24′ N, 169°07.10′ W; 53°23.13′ N, 167°50.50′ W; 53°18.95′ N, 167°51.06′ W; 53°58.97′ N, 166°16.50′ W; 54°02.69′ N, 166°02.93′ W; 54°07.69′ N, 165°39.74′ W; 54°08.40′ N, 165°38.29′ W; 54°11.71′ N, 165°23.09′ W; 54°23.74′ N, 164°44.73′ W; and southward to the limits of the US EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass), between 170°00′ W long and 159°00′ W long.
620	*Central Regulatory Area, Chirikof District.* Along the south side of the Alaska Peninsula, between 159°00′ W long and 154°00′ W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).
630	*Central Regulatory Area, Kodiak District.* Along the south side of continental Alaska, between 154°00′ W long and 147°00′ W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
640	*Eastern Regulatory Area, West Yakutat District.* Along the south side of continental Alaska, between 147°00′ W long and 140°00′ W long, and southward to the limits of the US EEZ, as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
649	*Prince William Sound.* Includes those waters of the State of Alaska inside the base line as specified in Alaska State regulations at 5 AAC 28.200.
650	*Eastern Regulatory Area, Southeast Outside District.* East of 140°00′ W long and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 659.
659	*Southeast Inside District.* As specified in Alaska State regulations at 5 AAC 28.105 (a)(1) and (2).
690	*Gulf of Alaska outside the U.S. EEZ* as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).

Note: A statistical area is the part of a reporting area contained in the EEZ.

[64 FR 61987, Nov. 15, 1999; 65 FR 25291, May 1, 2000]

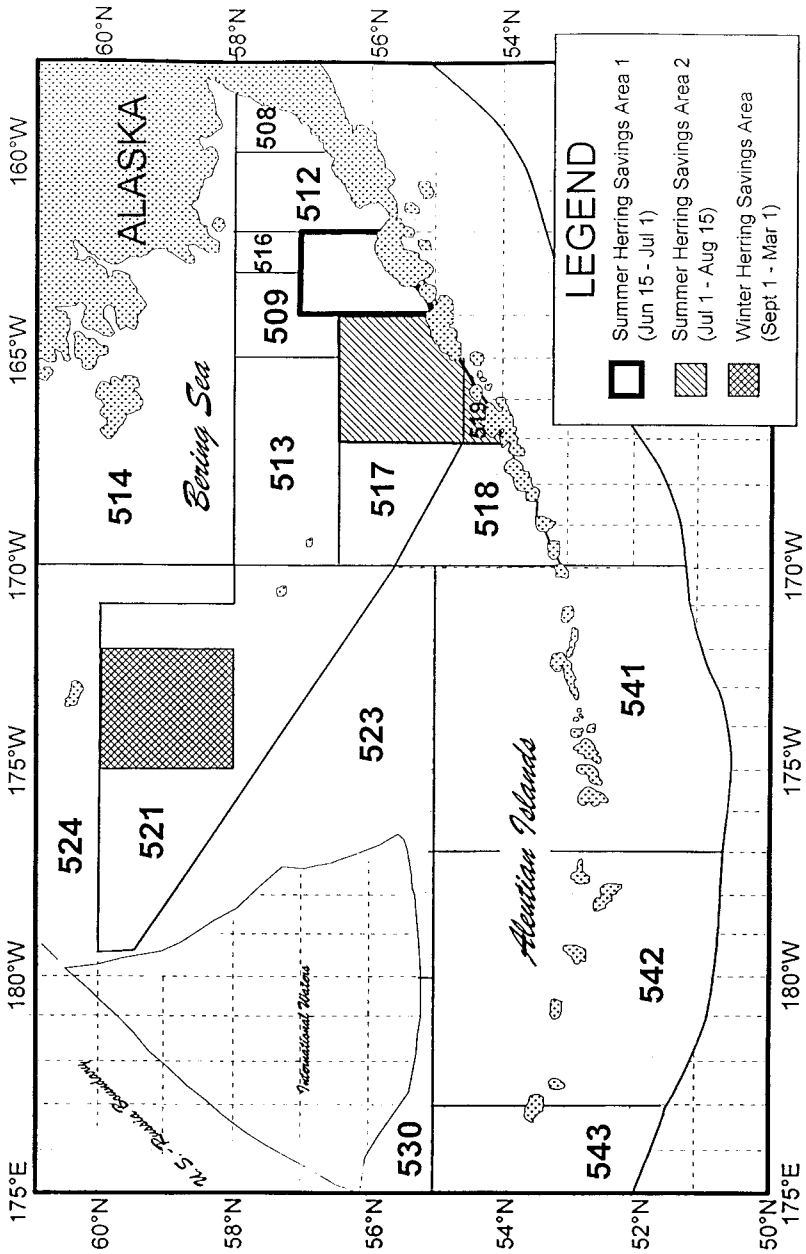

Figure 4 to Part 679. BSAI Herring Savings Areas
a. Map.

FIGURE 4 TO PART 679—HERRING SAVINGS AREAS IN THE BSAI

b. COORDINATES

Name	Description and effective date
Summer Herring Savings Area 1.	That part of the Bering Sea subarea that is south of 57° N lat and between 162° and 164° W long from 1200 hours, A.l.t., June 15 through 1200 hours, A.l.t. July 1 of a fishing year.
Summer Herring Savings Area 2.	That part of the Bering Sea subarea that is south of 56°30″ N lat and between 164° and 167° W long from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t. August 15 of a fishing year.
Winter Herring Savings Area	That part of the Bering Sea subarea that is between 58° and 60° N lat and between 172° and 175° W long from 1200 hours, A.l.t. September 1 of the current fishing year through 1200 hours, A.l.t. March 1 of the succeeding fishing year.

[64 FR 61989, Nov. 15, 1999]

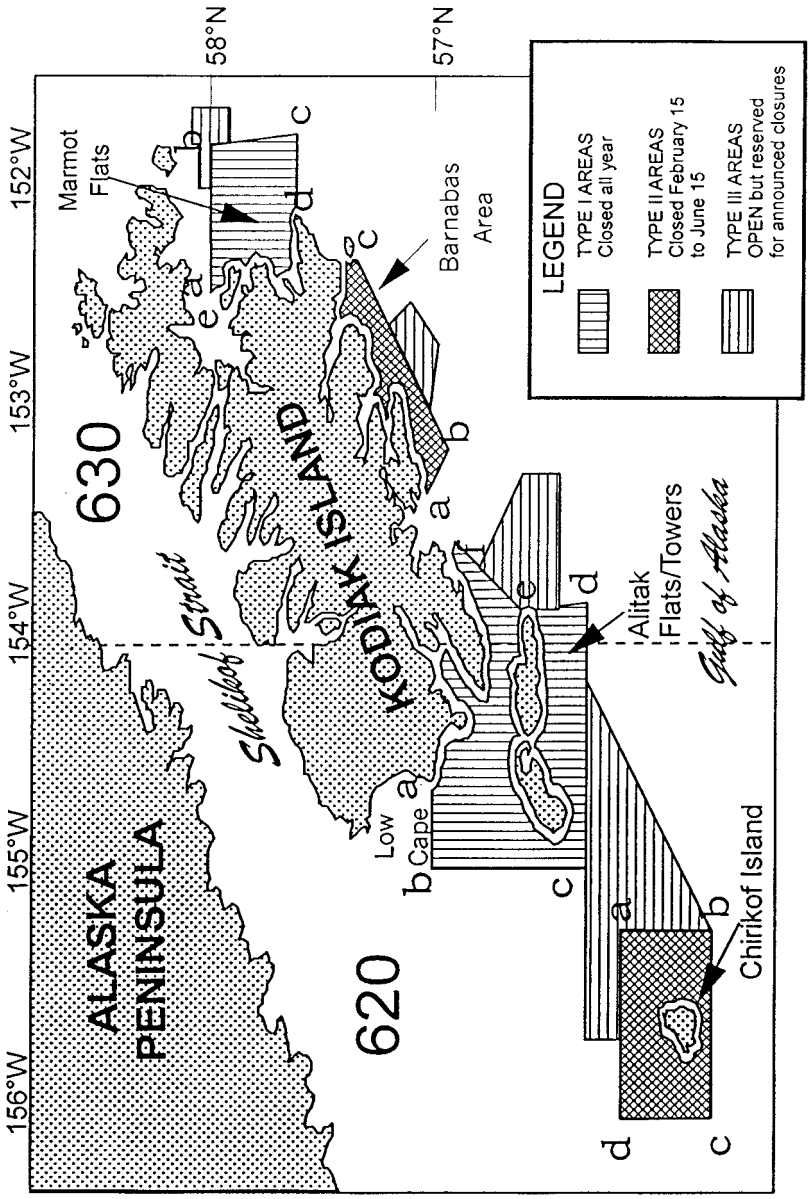

Figure 5 to Part 679. Areas closed to non-pelagic trawl gear in the Gulf of Alaska near Kodiak Island

a. Map

FIGURE 5 TO PART 679—KODIAK ISLAND AREAS CLOSED TO NON–PELAGIC TRAWL GEAR

b. COORDINATES

Name and description of reference area	North latitude/West longitude	Reference point
Alitak Flats and Towers Areas		

Name and description of reference area	North latitude/West longitude	Reference point
All waters of Alitak Flats and the Towers Areas enclosed by a line connecting the following 7 points in the order listed:		
a	56°59′4″ 154°31′1″	Low Cape.
b	57°00′0″ 155°00′0″	
c	56°17′0″ 155°00′0″	
d	56°17′0″ 153°52′0″	
e	56°33′5″ 153°52′0″	Cape Sitkinak.
f	56°54′5″ 153°32′5″	East point of Twoheaded Island.
g	56°56′0″ 153°35′5″	Kodiak Island, thence, along the coastline of Kodiak Island until intersection of Low Cape.
a	56°59′4″ 154°31′1″	Low Cape.
Marmot Flats Area		
All waters enclosed by a line connecting the following five points in the clockwise order listed:		
a	58°00′0″ 152°30′0″	
b	58°00′0″ 151°47′0″	
c	57°37′0″ 151°47′0″	
d	57°37′0″ 152°10′1″	Cape Chiniak, then along the coastline of Kodiak Island to North Cape.
e	57°54′5″ 152°30′0″	
a	58°00′0″ 152°30′0″	
Chirikof Island Area		
All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter-clockwise order listed:		
a	56°07′0″ 155°13′0″	
b	56°07′0″ 156°00′0″	
c	55°41′0″ 156°00′0″	
d	55°41′0″ 155°13′0″	
a	56°07′0″ 155°13′0″	
Barnabas Area		
All waters enclosed by a line connecting the following six points in the counter clockwise order listed:		
a	57°00′0″ 153°18′0″	Black Point.
b	56°56′0″ 153°09′0″	
c	57°22′0″ 152°18′5″	South Tip of Ugak Island.
d	57°23′5″ 152°17′5″	North Tip of Ugak Island.
e	57°25′3″ 152°20′0″	Narrow Cape, thence, along the coastline of Kodiak Island Cape Kasick to Black Point, including inshore waters.
f	57°04′2″ 153°30′0″	
a	57°00′0″ 153°18′0″	

[64 FR 61990, Nov. 15, 1999]

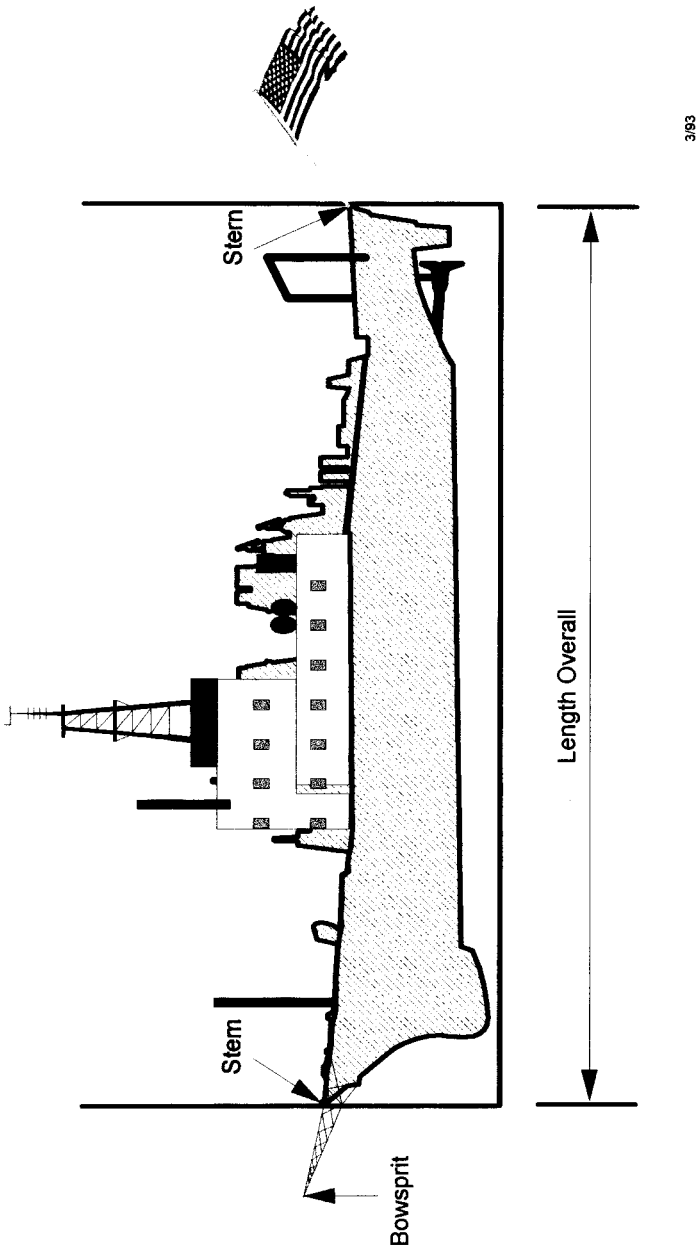

FIGURE 6 TO PART 679—LENGTH OVERALL OF A VESSEL

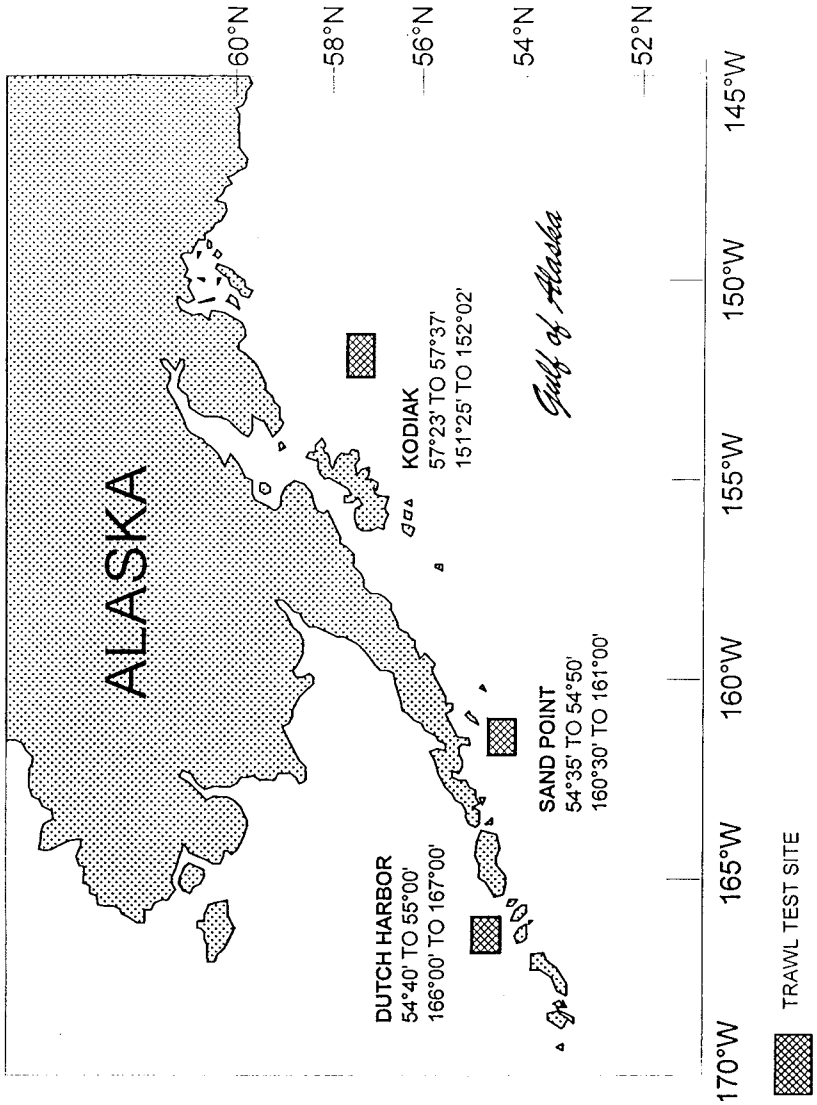

Figure 7 to Part 679. Location of Trawl Gear Test Areas in the GOA and the BSAI

[64 FR 61992, Nov. 15, 1999]

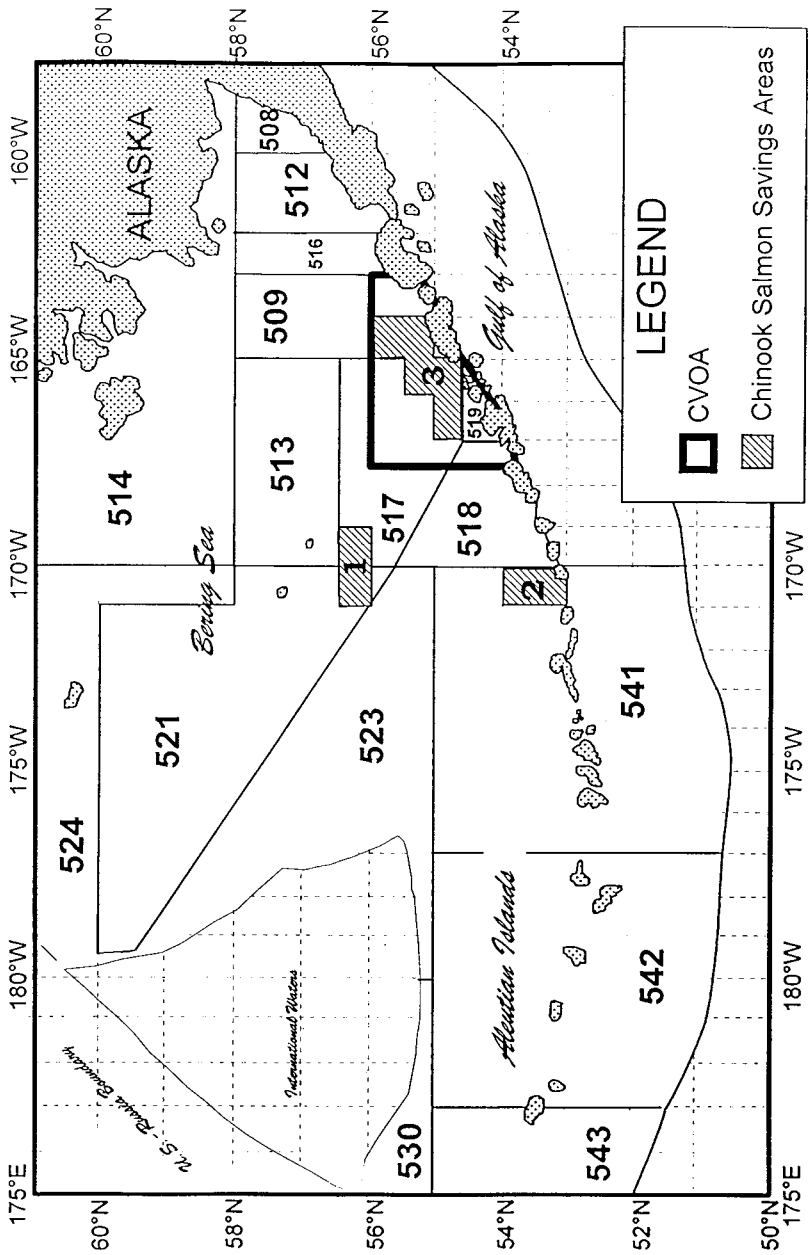

Figure 8 to Part 679. Chinook Salmon Savings Area of the BSAI.
a. Map

FIGURE 8 TO PART 679—CHINOOK SALMON SAVINGS AREAS OF THE BSAI

b. COORDINATES

The Chinook Salmon Savings Area is defined in the following three areas of the BSAI:

(*1*) The area defined by straight lines connecting the following coordinates in the order listed:

56°30′ N. lat., 171°00′ W. long.
56°30′ N. lat., 169°00′ W. long.
56°00′ N. lat., 169°00′ W. long.
56°00′ N. lat., 171°00′ W. long.
56°30′ N. lat., 171°00′ W. long.

(*2*) The area defined by straight lines connecting the following coordinates in the order listed:

54°00′ N. lat., 171°00′ W. long.
54°00′ N. lat., 170°00′ W. long.
53°00′ N. lat., 170°00′ W. long.
53°00′ N. lat., 171°00′ W. long.
54°00′ N. lat., 171°00′ W. long.

(*3*) The area defined by straight lines connecting the following coordinates in the order listed:

56°00′ N. lat., 165°00′ W. long.
56°00′ N. lat., 164°00′ W. long.
55°00′ N. lat., 164°00′ W. long.
55°00′ N. lat., 165°00′ W. long.
54°30′ N. lat., 165°00′ W. long.
54°30′ N. lat., 167°00′ W. long.
55°00′ N. lat., 167°00′ W. long.
55°00′ N. lat., 166°00′ W. long.
55°30′ N. lat., 166°00′ W. long.
55°30′ N. lat., 165°00′ W. long.
56°00′ N. lat., 165°00′ W. long.

[64 FR 61993, Nov. 15, 1999]

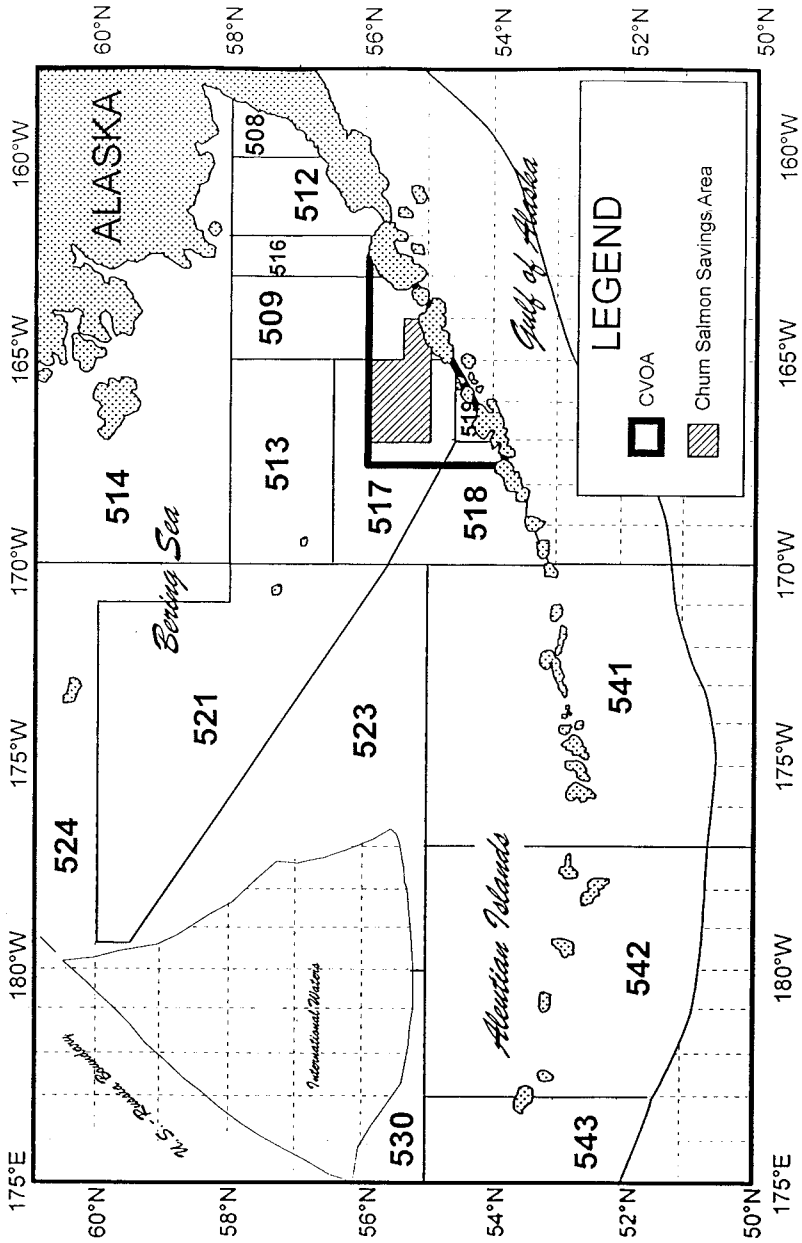

Figure 9 to Part 679. Chum Salmon Savings Area of the BSAI CVOA
a. Map

FIGURE 9 TO PART 679—CHUM SALMON SAVINGS AREA (CSSA) OF THE BSAI CVOA

b. COORDINATES

The CSSA is an area defined as that portion of the Bering Sea Subarea described by straight lines connecting the following coordinates in the order listed:

56°00′ N. lat. 167°00′ W. long.
56°00′ N. lat. 165°00′ W. long.
55°30′ N. lat. 165°00′ W. long.
55°30′ N. lat. 164°00′ W. long.
55°00′ N. lat. 164°00′ W. long.
55°00′ N. lat. 167°00′ W. long.
56°00′ N. lat. 167°00′ W. long.

[64 FR 61995, Nov. 15, 1999]

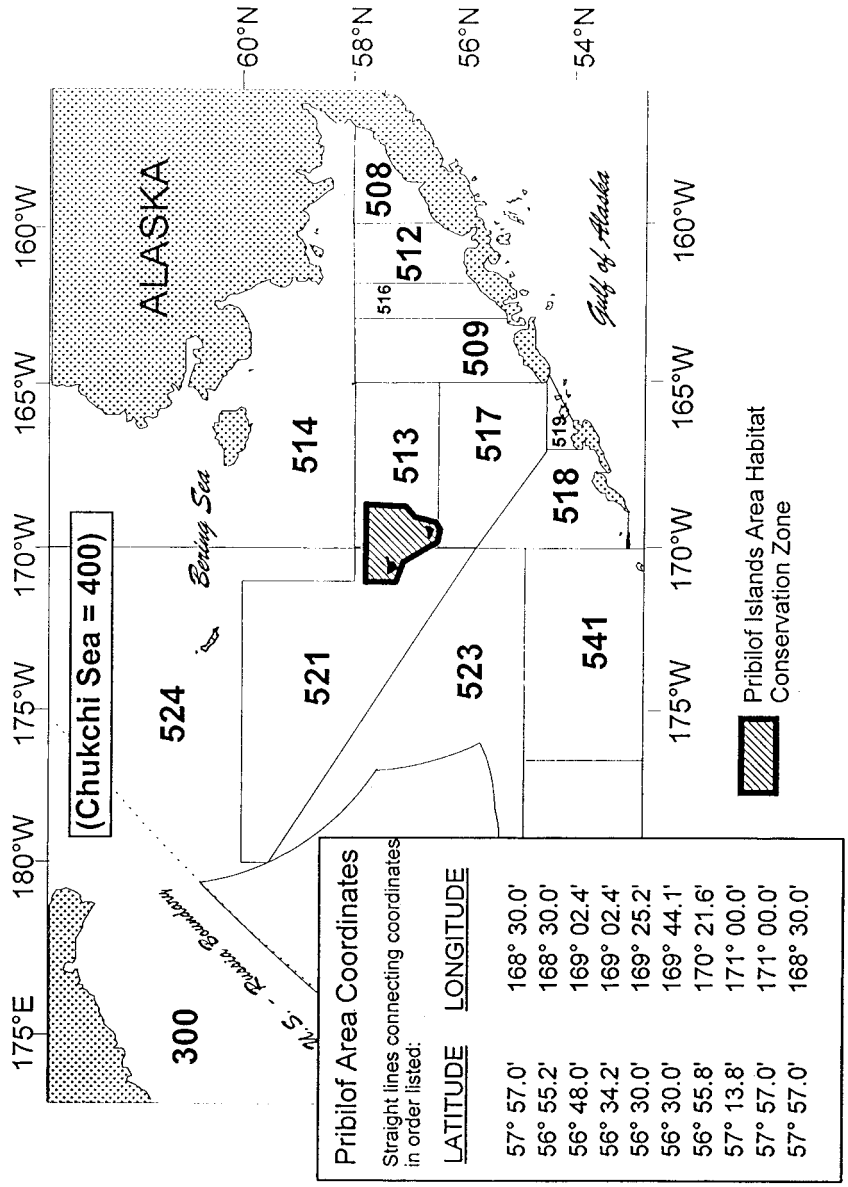

Figure 10 to Part 679. Pribilof Islands Area Habitat Conservation Zone in the Bering Sea

[64 FR 61997, Nov. 15, 1999]

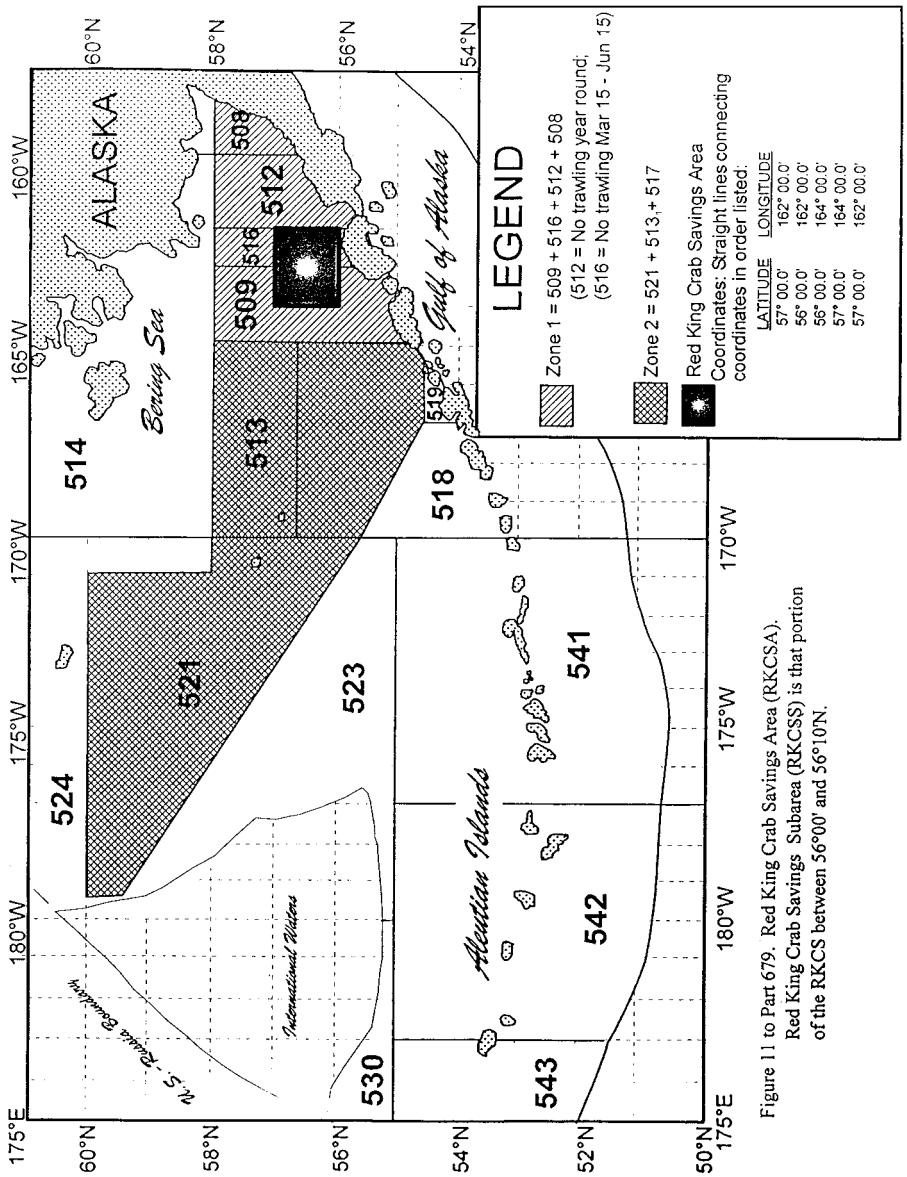

Figure 11 to Part 679. Red King Crab Savings Area (RKCSA). Red King Crab Savings Subarea (RKCSS) is that portion of the RKCS between 56°00' and 56°10'N.

[64 FR 61998, Nov. 15, 1999]

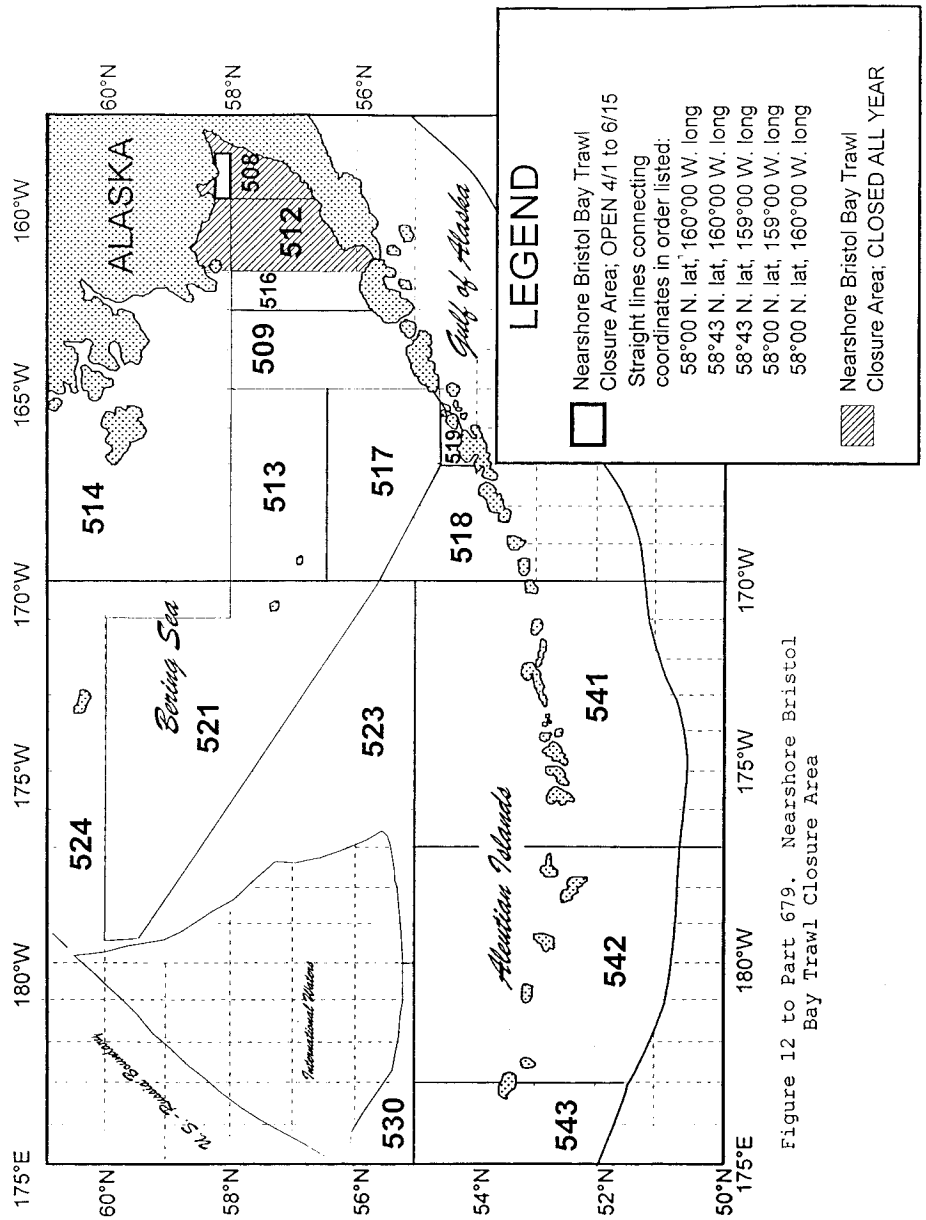

Figure 12 to Part 679. Nearshore Bristol Bay Trawl Closure Area

[64 FR 61999, Nov. 15, 1999]

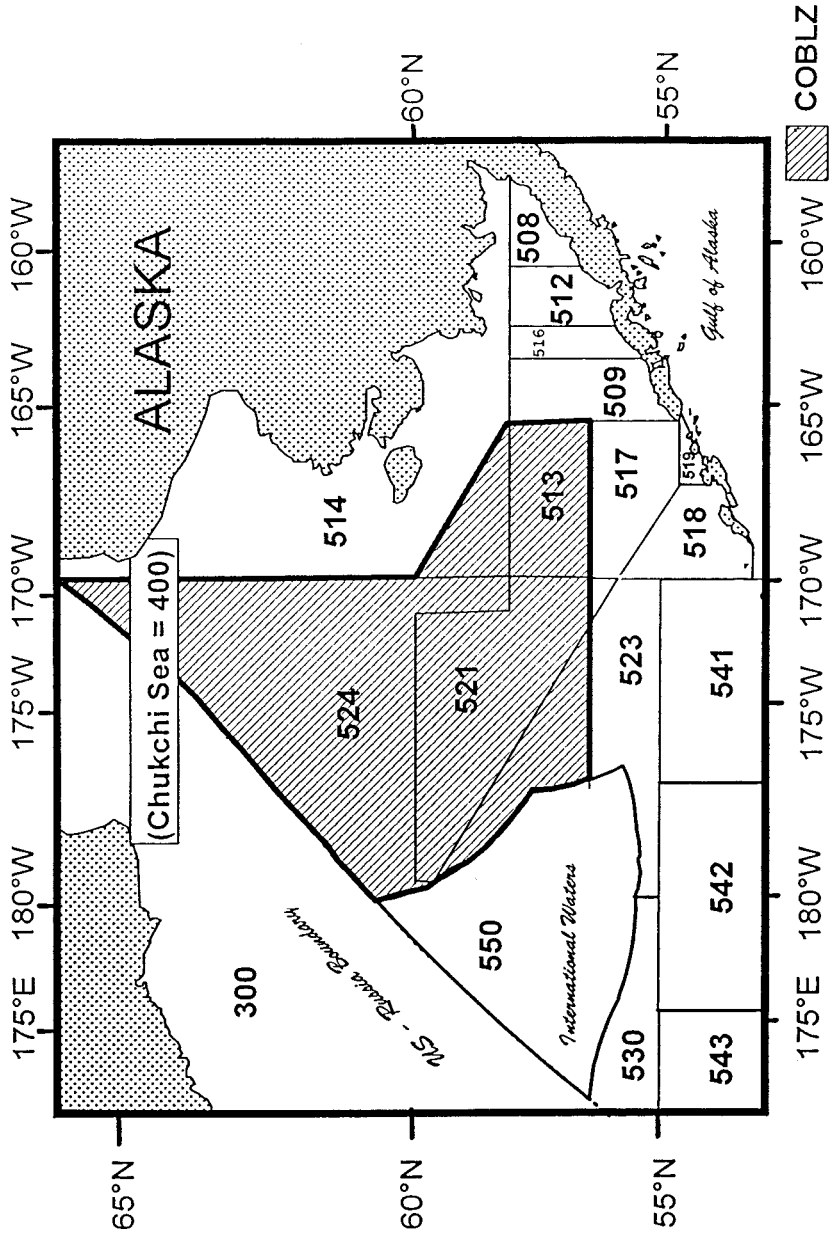

Figure 13 to Part 679. BSAI C. Opilio Crab Bycatch Limitation Zone (COBLZ)

a. Map

FIGURE 13 TO PART 679—BSAI C. OPILIO CRAB BYCATCH LIMITATION ZONE (COBLZ)

b. Coordinates

b. COORDINATES

The COBLZ is an area defined as that portion of the Bering Sea Subarea north of 56°30′ N. lat. that is west of a line connecting the following coordinates in the order listed:

56° 30′ N. lat., 165° 00′ W. long.
58° 00′ N. lat., 165° 00′ W. long.
59° 30′ N. lat., 170° 00′ W. long.

and north along 170° 00′ W. long. to its intersection with the U.S.-Russia Boundary.

[64 FR 62000, Nov. 15, 2000]

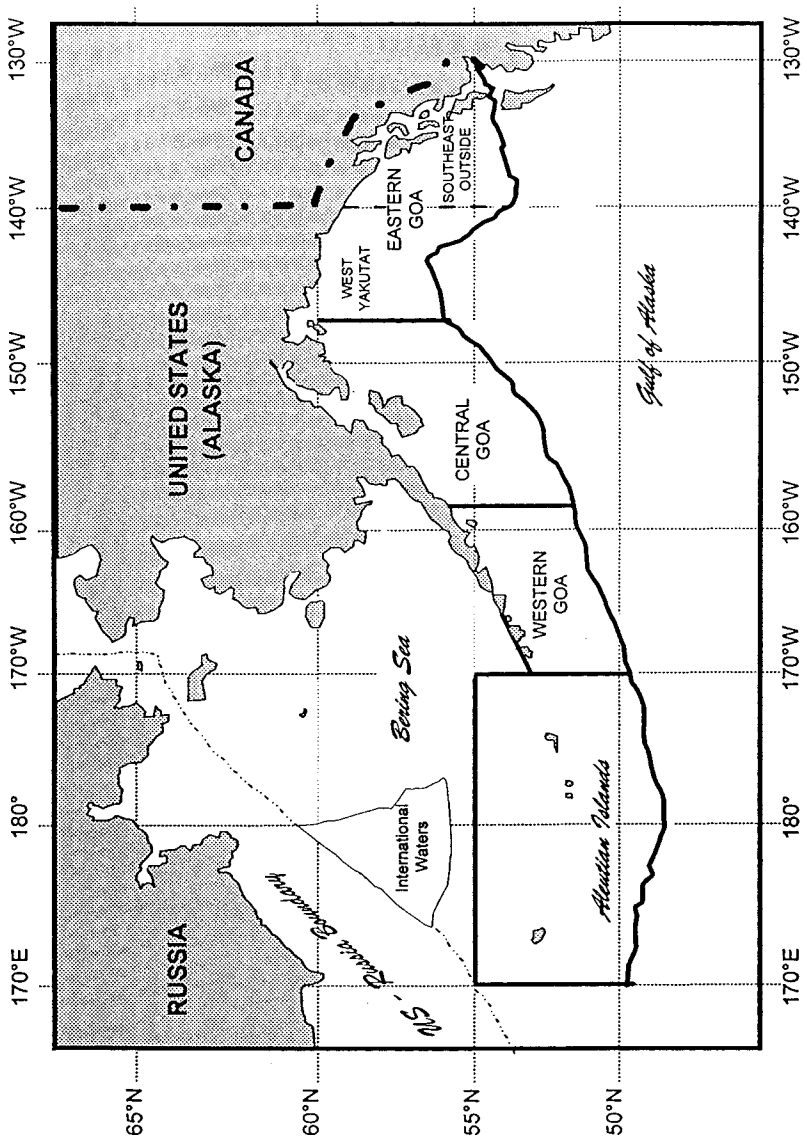

Figure 14 to Part 679. Sablefish Regulatory Areas and Districts

NOTE: Refer to Figures 1 and 3 for coordinates.

[64 FR 62002, Nov. 15, 2000]

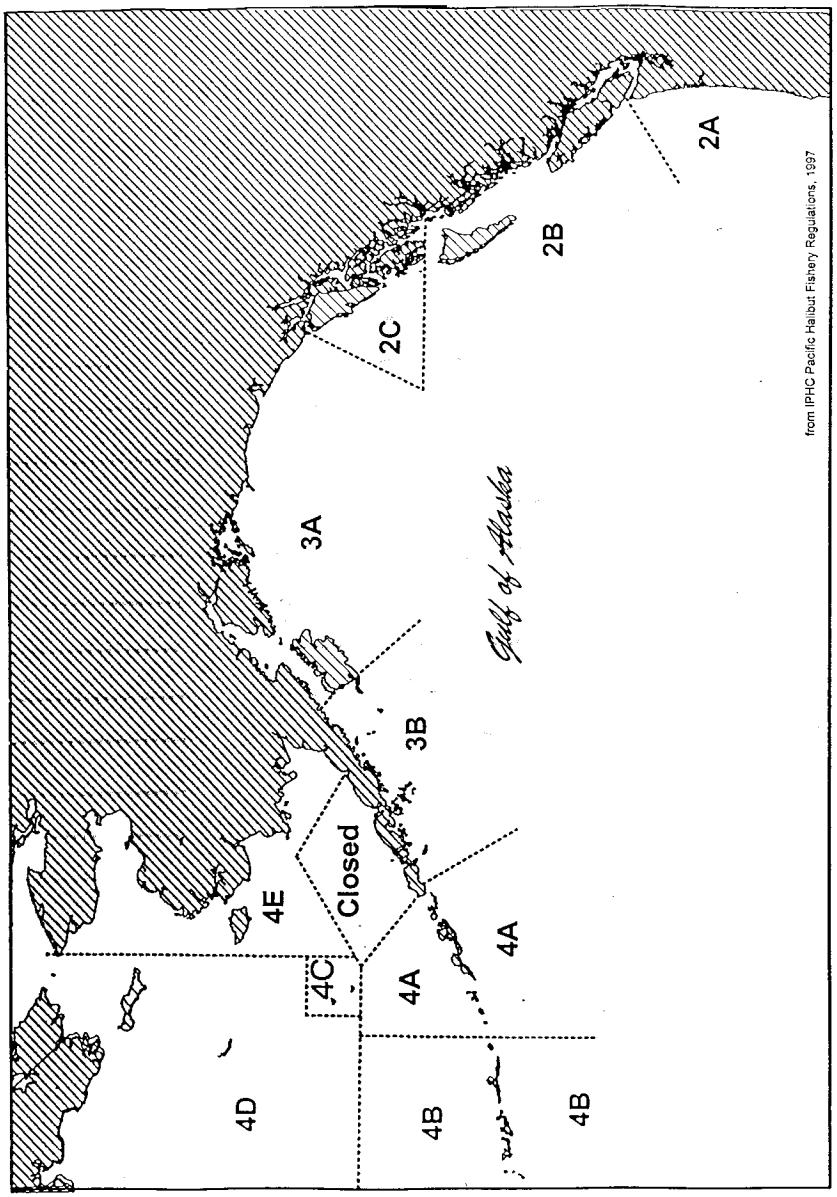

Figure 15 to Part 679. Regulatory Areas for the Pacific Halibut Fishery
a. Map

FIGURE FIGURE 15 TO PART 679—REGULATORY AREAS FOR THE PACIFIC HALIBUT FISHERY

b. COORDINATES

Area 2A includes all waters off the states of California, Oregon, and Washington;

Area 2B includes all waters off British Columbia;

Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape

Spencer Light (58°11′57″ N. lat., 136°38′18″ W. long.) and south and east of a line running 205° true from said light;

Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. lat., 155°35′00″ W. long.) to Cape Ikolik (57°17′17″ N. lat., 154°47′18″ W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. lat., 154°08′44″ W. long.), then 140° true;

Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. lat., 164°20′00″ W. long.) and south of 54°49′00″ N. lat. in Isanotski Strait;

Area 4A includes all waters in the GOA west of Area 3B and in the Bering Sea west of the closed area defined below that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.;

Area 4B includes all waters in the Bering Sea and the GOA west of Area 4A and south of 56°20′00″ N. lat.;

Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined below which are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.;

Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.;

Area 4E includes all waters in the Bering Sea north and east of the closed area defined below, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat.

Closed areas

All waters in the Bering Sea north of 54°49′00″ N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. lat., 164°55′42″ W. long.) to a point at 56°20′00″ N. lat., 168°30′00 W. long.; thence to a point at 58°21′25″ N. lat., 163°00′00″ W. long.; thence to Strogonof Point (56°53′18″ N. lat., 158°50′37″ W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light.

In Area 2A, all waters north of Point Chehalis, WA (46°53′18″ N. lat.).

[64 FR 62003, Nov. 15, 1999]

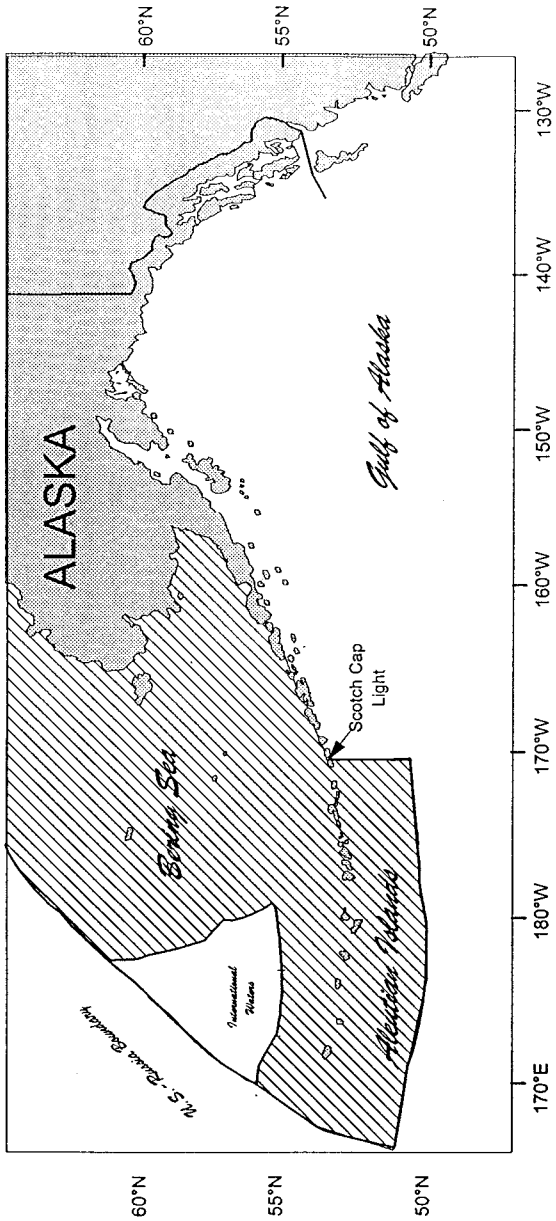

Figure 16 to Part 679. BSAI C. opilio and C. bairdi tanner crab endorsement areas. Waters east of the U.S.-Russian Convention Line of 1867 excluding all GOA waters east of a boundary extending south from Scotch Cap Light (54°36' N. lat., 164°44' W. long.).

[64 FR 62005, Nov. 15, 1999]

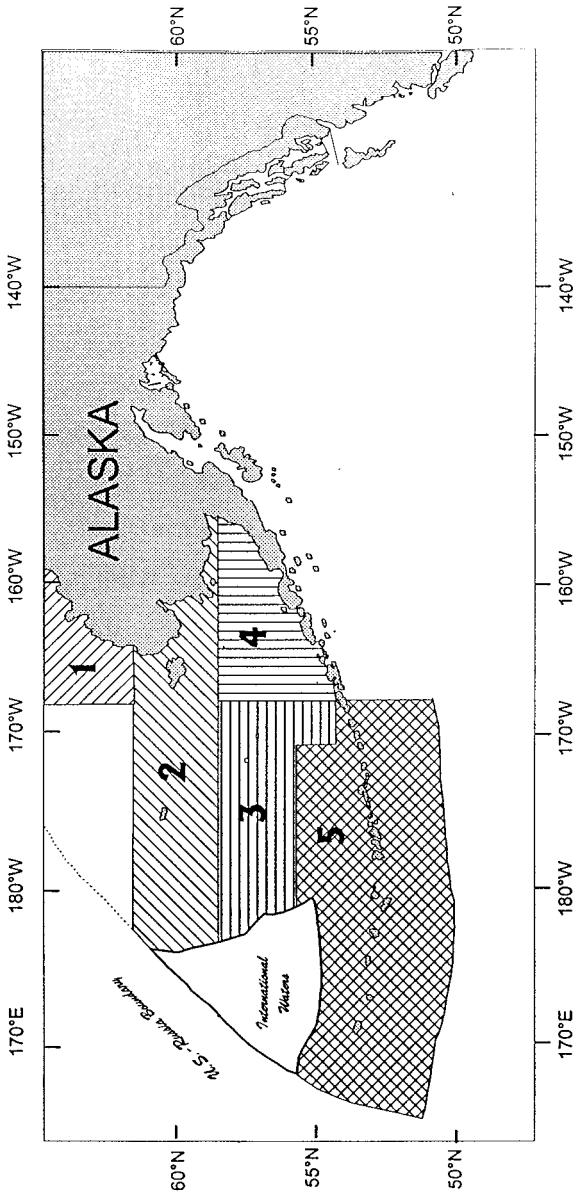

Figure 17 to Part 679. BSAI King crab endorsement areas

a. Map

FIGURE 17 TO PART 679.—BSAI KING CRAB ENDORSEMENT AREAS

b. COORDINATES

1. *Norton Sound Red King Crab and Blue King Crab Area*

Area defined by a northern boundary of 65°36′ N. lat., along the east side of continental Alaska, a southern boundary of 61°49′ N. lat., and a western boundary of 168° W. long.

2. *St. Matthew Blue King Crab Area*

Area defined by a northern boundary of 61°49′ N. lat., along the east side of continental Alaska, a southern boundary of 58°39′ N. lat., and a western boundary of the U.S.-Russian Convention Line of 1867.

3. *Pribilof Red King Crab and Blue King Crab Area*

Area defined by a northern boundary of 58°39′ N. lat., an eastern boundary of 168° W. long. south to 54°36′ N. lat., then westward to (54°36′ N. lat., 171° W. long.), then north to (55°30′ N. lat., 171° W. long.), then westward to the western boundary of the U.S.-Russian Convention Line of 1867.

4. *Bristol Bay Red King Crab Area*

Area defined by a northern boundary of 58°39′ N. lat., along the east side of continental Alaska, a southern boundary of 54°36′ N. lat., and a western boundary of 168° W. long. and including all waters of Bristol Bay.

5. *Aleutian Islands Brown King Crab and Red King Crab Area*

Area defined by a northern boundary of 55°30′ N. lat. eastward to 171° W. long., then south to Cape Sarichef (54°36′ N. lat., 171° W. long.), then east to Scotch Cap Light (54°36′ N. lat., 164°44′ W. long.), bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands), and a western boundary of the U.S.-Russian Convention Line of 1867.

[64 FR 62006, Nov. 15, 1999]

TABLE 1 TO PART 679—PRODUCT CODES

	Fish product code/description
03.	*Bled only.* Throat, or isthmus, slit to allow blood to drain.
04.	*Gutted, head on.* Belly slit and viscera removed.
05.	*Gutted, head off.* IFQ Pacific halibut only.
06.	*Head and gutted, with roe.*
07.	*Headed and gutted, Western cut.* Head removed just in front of the collar bone, and viscera removed.
08.	*Headed and gutted, Eastern cut.* Head removed just behind the collar bone, and viscera removed.
10.	*Headed and gutted, tail removed.* Head removed usually in front of collar bone, and viscera and tail removed.
11.	*Kirimi.* Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.
12.	*Salted and split.* Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.
13.	*Wings.* On skates, side fins are cut off next to body.
14.	*Roe.* Eggs, either loose or in sacs, or skeins.
15.	*Pectoral girdle.* Collar bone and associated bones, cartilage and flesh.
16.	*Heads.* Heads only, regardless where severed from body.
17.	*Cheeks.* Muscles on sides of head.
18.	*Chins.* Lower jaw (mandible), muscles, and flesh.
19.	*Belly.* Flesh in region of pelvic and pectoral fins and behind head.
20.	*Fillets with skin and ribs.* Meat and skin with ribs attached, from sides of body behind head and in front of tail.
21.	*Fillets with skin, no ribs.* Meat and skin with ribs removed, from sides of body behind head and in front of tail.
22.	*Fillets with ribs and no skin.* Meat with ribs with skin removed, from sides of body behind head and in front of tail.
23.	*Fillets, skinless/boneless.* Meat with both skin and ribs removed, from sides of body behind head and in front of tail.
24.	*Deep-skin fillet.* Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.
30.	*Surimi.* Paste from fish flesh and additives.
31.	*Minced.* Ground flesh.
32.	*Fish meal.* Meal from whole fish or fish parts; includes bone meal.
33.	*Fish oil.* Rendered oil from whole fish or fish parts.
34.	*Milt.* (in sacs, or testes).
35.	*Stomachs.* Includes all internal organs.
36.	*Octopus/squid mantles.* Flesh after removal of viscera and arms.

TABLE 1 TO PART 679—PRODUCT CODES—Continued

	Fish product code/description
37.	*Butterfly, no backbone.* Head removed, belly slit, viscera and most of backbone removed; fillets attached.
39.	*Bones* (if meal, report as 32).
54.	*Gutted, head on, with ice and slime.* Belly slit and viscera removed. IFQ Pacific halibut and sablefish only.
55.	*Gutted, head off, with ice and slime.* IFQ Pacific halibut only.
57.	*Headed and gutted, Western cut, with ice and slime.* IFQ sablefish only.
58.	*Headed and gutted, Eastern cut, with ice and slime.* IFQ sablefish only.
86.	*Donated prohibited species.* Number of Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program.
97.	*Other retained product.* (provide description)
98.	*WHOLE FISH CODES*
When using the following codes,	log round weights and not product weights, even if the whole fish is not used.
01.	*Whole fish/food fish.*
02.	*Whole fish/bait.* Processed for bait. Sold.
41.	*Whole fish/destined for offsite fish meal production.*
51.	*Whole fish/food fish with ice and slime.* IFQ sablefish only.
92.	*Whole fish/onboard bait.* Whole fish used as bait on board vessel. Not sold.
93.	*Whole fish/damaged.* Whole fish damaged by observer's sampling procedures.
95.	*Whole fish/personal use, consumption.* Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait.
	DISCARD PRODUCT CODES
96.	*Discard, decomposed.* Flea-infested fish, parasite-infested fish, decomposed, or previously discarded fish.
98.	*Discard, at sea.* Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Buying Stations delivering to Motherships.
99.	*Discard, onshore.* Discard after delivery and before processing by Shoreside Processors and Buying Stations delivering to Shoreside Processors and in-plant discard of whole groundfish and prohibited species during processing.
	PRODUCT DESIGNATION (see 679.2)
A	*Ancillary.*
P	*Primary.*
R	*Reprocessed or rehandled.*

[64 FR 62007, Nov. 15, 1999]

TABLE 2 TO PART 679—SPECIES CODES

Code	Species description
110	Cod, Pacific
121	Flounder, Arrowtooth and/or Kamchatka
122	Sole, flathead
123	Sole, rock
124	Sole, Dover
125	Sole, Rex
126	Sole, butter
127	Sole, yellowfin
128	Sole, English
129	Flounder starry
130	Lingcod
131	Sole, Petrale
132	Sole, sand
133	Flounder, Alaska Plaice
134	Turbot, Greenland
135	Rockfish greenstriped
136	Rockfish, northern
137	Rockfish, Bocaccio
138	Rockfish, copper
141	Perch, Pacific Ocean (S. alutus only)
142*	Rockfish, black
143	Rockfish thornyhead (all Sebastolobus species)
145	Rockfish yelloweye
146	Rockfish, canary
147	Rockfish, quillback
148	Rockfish, tiger
149	Rockfish, China
150	Rockfish, rosethorn
151	Rockfish, rougheye
152	Rockfish, shortraker

TABLE 2 TO PART 679—SPECIES CODES—Continued

Code	Species description
153	Rockfish, redbanded
154	Rockfish, dusky
155	Rockfish, yellowtail
156	Rockfish, widow
157	Rockfish silvergray
158	Rockfish, redstripe
159	Rockfish, darkblotched
160	Sculpins
166	Rockfish, sharpchin
167*	Rockfish, blue
170*	Sardine, Pacific (pilchard)
175	Rockfish, yellowmouth
176	Rock, Harlequin
177	Rockfish, blackgill
178	Rockfish, chilipepper
179	Rockfish, pygmy
180*	Shad
181	Rockfish, shortbelly
182	Rockfish, splitnose
183	Rockfish, stripetail
184	Rockfish, vermilion
185	Rockfish, Aurora
190*	Greenling, general
191*	Greenling, rock
192*	Greenling, whitespot
193	Atka mackerel (greenling)
194*	Greenling, kelp
206	Pacific Sand fish (family *Trichodontidae*)
207	Gunnels (family *Pholidae*)
208	Pricklebacks, warbonnets, eelblennys, cockscombs and Shannys (family *Stichaeidae*)
209	Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)
210*	Eels or eel-like fish
211*	Wrymouths
212*	Pacific hagfish
213*	Grenadier (rattail)
214*	Giant grenadier
220*	Pacific saury
250*	Pacific tomcod
260*	Cod, longfin
270	Pollock
510	Smelt, general
511	Eulachon smelt (family *Osmeridae*)
516	Capelin smelt (family *Osmeridae*)
521*	Arctic char, anadromous
531*	Dolly varden, anadromous
600*	Lamprey, pacific
689	Sharks, general
690*	Shark, salmon
691*	Shark, spiny dogfish
692*	Shark, Pacific sleeper
700	Skates, general
710	Sablefish (blackcod)
720*	Tuna, albacore
772	Laternfishes (family *Myctophidae*)
773	Deep-sea smelts (family *Bathylagidae*)
774	Pacific Sand lance (family *Ammodytidae*)
800	Krill (order *Euphausiacea*)
810*	Clam, butter
812*	Clam, surf
815*	Clam, geoduck
820*	Clam, cockle
830*	Clam, razor
840*	Clam, little-neck
842*	Clam, eastern softshell
850*	Scallop, weathervane
851*	Scallop, pink (or calico)
855*	Mussel, blue
860*	Abalone
870	Octopus
875	Squid
880*	Oysters
890*	Snails

TABLE 2 TO PART 679—SPECIES CODES—Continued

Code	Species description
895*	Sea cucumber
896*	Sea urchin
899*	Coral
900*	Crab, box
910*	Crab, dungeness
940*	Crab, Korean horsehair
960*	Shrimp, general
961*	Shrimp, pink
962*	Shrimp, sidestripe
963*	Shrimp, humpy
964*	Shrimp, coonstripe
965*	Shrimp, spot
	GROUP CODES
120	Miscellaneous flatfish (all flatfish without separate codes)
144	*Slope rockfish* (aurora, blackgill, Bocaccio, redstripe, silvergray, chilipepper, darkblotched, greenstriped, harlequin, pygmy, shortbelly, splitnose, stripetail, vermillion, yellowmouth, sharpchin)
168	*Demersal shelf rockfish* (china, copper, quillback, rosethorn, tiger, yelloweye, canary)
169	*Pelagic shelf rockfish* (dusky, yellowtail, widow)
171	Shortraker/rougheye rockfish
888	Mixed species tote (for use only on Product Transfer Report)
	PROHIBITED SPECIES CODES
200	Pacific halibut
235	Pacific herring (Family of *Clupeidae*)
410	Salmon, Chinook
420	Salmon, Sockeye
430	Salmon, Coho
440	Salmon, Pink
450	Salmon, Chum
540	Steelhead trout
921	Crab, red king
922	Crab, blue king
923	Crab, gold/brown king
924	Crab, scarlet king
931	Crab, bairdi Tanner
932	Crab, opilio Tanner
933	Crab, Tanner, grooved
934	Crab, Tanner, triangle

*ADF&G species codes.

[64 FR 62008, Nov. 15, 1999]

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

[Sheet 1 of 3]

FMP species	Product code												
	Species code	1, 2, 41, 92, 93, 95 Whole fish	3,42 Bled	4 Gutted head on	5 Gutted head off	6 H&G with roe	7 H&G western cut	8 H&G eastern cut	10 H&G w/o tail	11 Kirimi	12 Salted & split	13 Wings	14 Roe
PACIFIC COD	110	1.00	0.98	0.85	.....	0.63	0.57	0.47	0.44	.....	0.45	.....	0.05
ARROWTOOTH FLOUNDER	121	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
FLATHEAD SOLE	122	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
ROCK SOLE ..	123	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
DOVER SOLE	124	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
REX SOLE	125	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
YELLOWFIN SOLE	127	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
GREENLAND TURBOT	134	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT—Continued

[Sheet 1 of 3]

FMP species	Product code												
	Species code	1, 2, 41, 92, 93, 95 Whole fish	3,42 Bled	4 Gutted head on	5 Gutted head off	6 H&G with roe	7 H&G western cut	8 H&G eastern cut	10 H&G w/o tail	11 Kirimi	12 Salted & split	13 Wings	14 Roe
THORNYHEAD ROCKFISH	143	1.00	0.98	0.88	.....	0.55	0.60	0.50	.....	.....	.....	.....	.....
SCULPINS	160	1.00	0.98	0.87	.....	.....	0.50	0.40	.....	.....	.....	.....	.....
ATKA MACKEREL	193	1.00	0.98	0.87	.....	0.67	0.64	0.61	.....	.....	.....	.....	.....
POLLOCK	270	1.00	0.98	0.80	.....	0.70	0.65	0.56	0.50	.....	.....	.....	0.07
SMELTS	510	1.00	0.98	0.82	.....	.....	0.71	.....	.....	.....	.....	.....	.....
EULACHON	511	1.00	0.98	0.82	.....	.....	0.71	.....	.....	.....	.....	.....	.....
CAPELIN	516	1.00	0.98	0.89	.....	.....	0.78	.....	.....	.....	.....	.....	.....
SHARKS	689	1.00	0.98	0.83	.....	.....	0.72	.....	.....	.....	.....	.....	.....
SKATES	700	1.00	0.98	0.90	.....	.....	.....	0.32	.....	.....	.....	0.32	.....
SABLEFISH	710	1.00	0.98	0.89	.....	.....	0.68	0.63	0.50	.....	.....	.....	.....
IFQ SABLEFISH	710	1.00	0.98	0.89	.....	.....	0.68	0.63	0.50	.....	.....	.....	.....
OCTOPUS	870	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....	.....
SQUID	875	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....	.....
ROCKFISH**	.....	1.00	0.98	0.88	.....	.....	0.60	0.50	.....	.....	.....	.....	.....
Conversion rates for PACIFIC HALIBUT	200	.....	.....	0.90	1.0	.....	.....	.....	.....	.....	.....	.....	.....

TABLE 3 TO PART 679.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

[Sheet 2 of 3]

FMP species	Product code												
	Species code	15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets w/skin & ribs	21 Fillets w/skin no ribs	22 Fillets w/ribs no skin	23 Fillets skinless/bnless	24 Fillets deep skin	30 Surimi	31 Mince
PACIFIC COD	110	0.05	.....	0.05	.....	0.01	0.45	0.35	0.25	0.25	.....	0.15	0.5
ARROWTOOTH FLOUNDER	121	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
FLATHEAD SOLE	122	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
ROCK SOLE	123	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
DOVER SOLE	124	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
REX SOLE	125	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
YELLOWFIN SOLE	127	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	0.18	.....
GREENLAND TURBOT	134	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
THORNYHEAD ROCKFISH	143	.....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	.....	.....	.....
SCULPINS	160	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
ATKA MACKEREL	193	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.15	.....
POLLOCK	270	.....	0.15	.....	.....	.....	0.35	0.30	0.30	0.21	0.16	0.16[1]; 0.17[2]	0.22
SMELTS	510	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....
EULACHON	511	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....
CAPELIN	516	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
SHARKS	689	.....	.....	.....	.....	.....	.....	0.30	0.30	0.25	.....	.....	.....

TABLE 3 TO PART 679.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT—Continued

[Sheet 2 of 3]

FMP species	Product code												
	Species code	15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets w/skin & ribs	21 Fillets w/skin no ribs	22 Fillets w/ribs no skin	23 Fillets skin-less/bnless	24 Fillets deep skin	30 Surimi	31 Mince
SKATES	700	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
SABLEFISH	710	.....	.....	0.05	.....	.....	0.35	0.30	0.30	0.25	.....	.....	.....
IFQ SABLEFISH	710	.....	.....	0.05	.....	.....	0.35	0.30	0.30	0.25	.....	.....	.....
OCTOPUS	870	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
SQUID	875	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
ROCKFISH**	.....	.....	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	.....	.....	.....
Conversion rates for PACIFIC HALIBUT	200	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

TABLE 3 TO PART 679.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

[Sheet 3 of 3]

FMP species	Product code													
	Species code	32 Meal	33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly backbone removed	51 Wholefish w/I&S	54 Gutted, head on w/I&S	55 Gutted, head off w/I&S	57 H&G western w/I&S	58 H&G eastern w/I&S	96 Decomposed fish	98, 99 Discards
PACIFIC COD	110	0.17	.....	.....	.....	.....	0.43	.....	.....	.....	.....	.....	0.00	1.00
ARROWTOOTH FLOUNDER	121	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
FLATHEAD SOLE	122	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
ROCK SOLE	123	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
DOVER SOLE	124	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
REX SOLE	125	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
YELLOWFIN SOLE	127	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
GREENLAND TURBOT	134	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
THORNYHEAD ROCKFISH	143	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
SCULPINS	160	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
ATKA MACKEREL	193	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
POLLOCK	270	0.17	.....	.....	.....	.....	0.43	.....	.....	.....	.....	.....	0.00	1.00
SMELTS	510	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
EULACHON	511	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
CAPELIN	516	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
SHARKS	689	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
SKATES	700	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
SABLEFISH	710	0.17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
IFQ SABLEFISH	710	0.17	.....	.....	.....	.....	.....	1.02	0.91	.....	0.70	0.65	0.00	1.00
OCTOPUS	870	0.17	.....	.....	.....	0.85	.....	.....	.....	.....	.....	.....	0.00	1.00
SQUID	875	0.17	.....	.....	.....	0.75	.....	.....	.....	.....	.....	.....	0.00	1.00
ROCKFISH**	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.00	1.00
Conversion rates for PACIFIC HALIBUT	200	.....	.....	.....	.....	.....	.....	.....	0.88	0.98	.....	.....	0.00	1.00

Note: To obtain round weight of groundfish, divide the product weight of groundfish by a PRR. To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by a conversion rate.

[1] Standard pollock surimi rate during January through June.
[2] Standard pollock surimi rate during July through December.

[64 FR 62011, Nov. 15, 1999; 65 FR 10978, Mar. 1, 2000]

TABLE 4 TO PART 679—BERING SEA SUBAREA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at part 223.202 of this title a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm).				
Sea Lion Rocks	55°28.0′ N	163°12.0′ W		
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Bogoslof Island	53°56.0′ N	168°02.0′ W		
Ogchul Island	53°00.0′ N	168°24.0′ W		
Adugak Island	52°55.0′ N	169°10.5′ W		
Walrus Island	57°11.0′ N	169°56.0′ W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679, Trawling Prohibited Within 20 nm).				
Sea Lion Rocks	55°28.0′ N	163°12.0′ W		
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

[61 FR 31230, June 19, 1996, as amended at 64 FR 14077, Mar. 23, 1999]

TABLE 5 TO PART 679.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS

Name of island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at § 227.12(a)(2) of this title				
a. *Trawling Prohibited Year-Round Within 10 nm:*				
Yunaska Island	52°42.0′ N	170°38.5′ W	52°41.0′ N	170°34.5′ W
Kasatochi Island	52°10.0′ N	175°31.0′ W	52°10.5′ N	175°29.0′ W
Adak Island	51°36.5′ N	176°59.0′ W	51°38.0′ N	176°59.5′ W
Gramp Rock	51°29.0′ N	178°20.5′ W		
Tag Island	51°33.5′ N	178°34.5′ W		
Ulak Island	51°20.0′ N	178°57.0′ W	51°18.5′ N	178°59.5′ W
Semisopochnoi	51°58.5′ N	179°45.5′ E	51°57.0′ N	179°46.0′ E
Semisopochnoi	52°01.5′ N	179°37.5′ E	52°01.5′ N	179°39.0′ E
Amchitka Island	51°22.5′ N	179°28.0′ E	51°21.5′ N	179°25.0′ E
Amchitka Is/Column Rocks	51°32.5′ N	178°49.5′ E		
Ayugadak Point	51°45.5′ N	178°24.5′ E		
Kiska Island	51°57.5′ N	177°21.0′ E	51°56.5′ N	177°20.0′ E
Kiska Island	51°52.5′ N	177°13.0′ E	51°53.5′ N	177°12.0′ E
Buldir Island	52°20.5′ N	175°57.0′ E	52°23.5′ N	175°51.0′ E
Agattu Is./Gillon Pt	52°24.0′ N	173°21.5′ E		
Agattu Island	52°23.5′ N	173°43.5′ E	52°22.0′ N	173°41.0′ E
Attu Island	52°54.5′ N	172°28.5′ E	52°57.5′ N	172°31.5′ E
b. *Trawling Prohibited Year-Round Within 20 nm:*				
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		

Note: Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[64 FR 62013, Nov. 15, 1999]

TABLE 6 TO PART 679—GULF OF ALASKA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at part 223.202 of this title a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm).				
Outer Island	59°20.5′ N	150°23.0′ W	59°21.0′ N	150°24.5′ W
Sugarloaf Island	58°53.0′ N	152°02.0′ W		
Marmot Island	58°14.5′ N	151°47.5′ W	58°10.0′ N	151°51.0′ W
Chirikof Island	55°46.5′ N	155°39.5′ W	55°46.5′ W	155°43.0′ W
Chowiet Island	56°00.5′ N	156°41.5′ W	56°00.5′ N	156°42.0′ W
Atkins Island	55°03.5′ N	159°18.5′ W		
Chernabura Island	54°47.5′ N	159°31.0′ W	54°45.5′ N	159°33.5′ W
Pinnacle Rock	54°46.0′ N	161°46.0′ W		
Clubbing Rocks-N	54°43.0′ N	162°26.5′ W		
Clubbing Rocks-S	54°42.0′ N	162°26.5′ W		
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ogchul Island	53°00.0′ N	168°24.0′ W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679.20. Trawling Prohibited Within 20 nm).				
Akun I.	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan I.	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ugamak I.	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

[61 FR 31230, June 19, 1996, as amended at 64 FR 14077, Mar. 23, 1999]

Table 7 to Part 679--Communities Determined to be Eligible to Apply for Community Development Quotas
(Other communities that do not appear on this table may also be elgible.)

Aleutian Region
1. Akutan
2. Atka
3. False Pass
4. Nelson Lagoon
5. Nikolski
6. St. George
7. St. Paul

Bering Strait
1. Brevig Mission
2. Diomede/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15. White Mountain

Bristol Bay
1. Alegnagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Ekuk
6. Manokotak
7. Naknek
8. Pilot Point/Ugashik
9. Port Heiden/Meschick
10. South Naknek
11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

Southwest Coastal Lowlands
1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute
15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point
19. Toksook Bay
20. Tununak
21. Tuntutuliak

[63 FR 47375, Sept. 4, 1998]

TABLE 8 TO PART 679.—HARVEST ZONE CODES FOR USE WITH PRODUCT TRANSFER REPORTS AND VESSEL ACTIVITY REPORTS

Harvest zone	Description
A	EEZ off Alaska.
B	State waters of Alaska.
C	State waters other than Alaska.
D	Donut Hole.
F	Foreign Waters Other than Russia.
I	International Waters other than Donut Hole and Seamounts.
R	Russian waters.
S	Seamounts in International waters.
U	U.S. EEZ other than Alaska.

[64 FR 62014, Nov. 15, 1999]

TABLE 9 TO PART 679.—REQUIRED LOGBOOKS, REPORTS AND FORMS FROM PARTICIPANTS IN THE FEDERAL GROUNDFISH FISHERIES

Name of logbook/form	Catcher-vessel	Catcher-processor	Mothership	Shoreside processor	Buying station
Daily Fishing Logbook (DFL)*.	YES	NO	NO	NO	NO
Daily Cumulative Production Logbook (DCPL)*.	NO	YES	YES	YES	NO
Daily Cumulative Logbook (DCL).	NO	NO	NO	NO	YES
Check-in/Check-out Report.	NO	YES	YES	YES	YES
U.S. Vessel Activity Report (VAR).	YES	YES	YES	NO	NO
Weekly Production Report (WPR).	NO	YES	YES	YES	NO
Daily Production Report (DPR) [1].	NO	YES	YES	YES	NO
Product Transfer Report (PTR).	NO	YES	YES	YES	NO

[1] When required by Regional Administrator.
* Two formats of the DFL and catcher/processor DCPL exist: one for non-IFQ groundfish and another for combined groundfish/IFQ.

[64 FR 62014, Nov. 15, 1999]

TABLE 10 TO PART 679—GULF OF ALASKA RETAINABLE PERCENTAGES

[Incidental Catch Species[1]]

	Pollock	Pacific cod	Deep flatfish	Rex sole	Flat-head sole	Shal-low flatfish	Arrowtooth	Sable-fish	Aggre-gated rock-fish[2]	SR/RE ERA[3]	DSR SEO[4]	Atka mack-erel	Aggre-gated forage fish[5]	Other species
BASIS SPECIES[1]														
Pollock	[6]na	20	20	20	20	20	35	1	5	([7])	10	20	2	20
Pacific cod	20	[6]na	20	20	20	20	35	1	5	([7])	10	20	2	20
Deep flatfish	20	20	[6]na	20	20	20	35	7	15	7	1	20	2	20
Rex sole	20	20	20	[6]na	20	20	35	7	15	7	1	20	2	20
Flathead sole	20	20	20	20	[6]na	20	35	7	15	7	1	20	2	20
Shallow flatfish	20	20	20	20	20	[6]na	35	1	5	([7])	10	20	2	20
Arrowtooth	5	5	0	0	0	0	[6]na	0	0	0	0	0	2	0
Sablefish	20	20	20	20	20	20	35	[6]na	15	7	1	20	2	20
Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	[6]na	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
DSR–SEO	20	20	20	20	20	20	35	7	15	7	[6]na	20	2	20
Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	([7])	10	[6]na	2	20
Other species	20	20	20	20	20	20	35	1	5	([7])	10	20	2	[6]na
Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	([7])	10	20	2	20

[1] For definition of species, see Table 1 of the GOA groundfish specifications.
[2] Aggregated rockfish means rockfish defined at § 679.2 except: in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category and in the Eastern Regulatory Area where shortraker/rougheye (SR/RE) rockfish is a separate category for those species marked with a numerical percentage.
[3] SR/RE ERA=shortraker/rougheye rockfish in the Eastern Regulatory Area.
[4] SEO=Southeast Outside District.
[5] Forage fish are defined at § 679.2.
[6] na=not applicable.
[7] Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish.

[64 FR 68055, Dec. 6, 1999; 65 FR 31108, May 16, 2000]

Table 11 to Part 679--Bering Sea and Aleutian Islands Management Area Retainable Percentages

	BYCATCH SPECIES[1]														
	Pollock	Pacific cod	Atka mackerel	Arrow-tooth	Yellowfin sole	Other flatfish	Rocksole	Flathead sole	Greenland turbot	Sable-fish	Short-raker/ rougheye (AI)	Aggregated rockfish[2]	Squid	Aggregate Forage Fish[3]	Other species
BASIS SPECIES[1]															
Pollock	na[4]	20	20	35	20	20	20	20	1	1	2	5	20	2	20
Pacific cod	20	na[4]	20	35	20	20	20	20	1	1	2	5	20	2	20
Atka mackerel	20	20	na[4]	35	20	20	20	20	1	1	2	5	20	2	20
Arrowtooth	0	0	0	na[4]	0	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na[4]	35	35	35	1	1	2	5	20	2	20
Other flatfish	20	20	20	35	35	na[4]	35	35	1	1	2	5	20	2	20
Rocksole	20	20	20	35	35	35	na[4]	35	1	1	2	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na[4]	35	15	7	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na[4]	15	7	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na[4]	7	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	na[4]	15	20	2	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Sharpchin/ Northern-AI	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Shortraker/ Rougheye-AI	20	20	20	35	20	20	20	20	35	15	na[4]	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	2	5	na[4]	2	20
Other species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na[4]
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

[1]For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2]Aggregated rockfish of the genera Sebastes and Sebastolobus except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.
[3]Forage fish are defined at § 679.2.
[4]na = not applicable.

TABLE 12 TO 50 CFR PART 679.—STELLER SEA LION PROTECTION AREAS IN THE BERING SEA SUBAREA

[Effective through December 31, 1999]

Management area/Island/Site	Boundaries to				Directed fishing for pollock prohibited within * * * (nm)		Trawling prohibited within * * * (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 30	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Bering Sea:								
Walrus	57°11.00′	169°56.00′			20	20	.....	10
Uliaga	53°04.00′	169°47.00′	53°05.00′	169°46.00′	.....	20	.....	.....
Chuginadak	52°46.50′	169°42.00′	52°46.50′	169°44.50′	.....	20	.....	.....
Kagamil	53°02.50′	169°41.00′			.....	20	.....	.....
Samalga	52°46.00′	169°15.00′			.....	20	.....	.....
Adugak	52°55.00′	169°10.50′			20	20	.....	10
Umnak/Cape Aslik	53°25.00′	168°24.50′			20	20	.....	.....
Ogchul	53°00.00′	168°24.00′			20	20	.....	10
Bogoslof/Fire Island	53°56.00′	168°02.00′			20	20	.....	10
Emerald	53°17.50′	167°51.50′			.....	20	.....	.....
Unalaska/Cape Izigan	53°13.50′	167°39.00′			20	20	.....	.....
Unalaska/Bishop Pt	53°58.50′	166°57.50′			20	20	.....	.....
Akutan/Reef-lava	54°07.50′	166°06.50′	54°10.50′	166°04.50′	20	20	.....	.....
Old Man Rocks	53°52.00′	166°05.00′			20	20	.....	.....
Akutan/Cape Morgan	54°03.50′	166°00.00′	54°05.50′	166°05.00′	20	20	20	10
Rootok	54°02.50′	165°34.50′			.....	20	.....	.....
Akun/Billings Head	54°18.00′	165°32.50′	54°18.00′	165°31.50′	20	20	20	10
Tanginak	54°12.00′	165°20.00′			20	.....	.....	.....
Tigalda/Rocks NE	54°09.00′	164°57.00′	54°10.00′	164°59.00′	20	20	.....	.....
Unimak/Cape Sarichef	54°34.50′	164°56.50′			10	10	.....	.....
Aiktak	54°11.00′	164°51.00′			20	.....	.....	.....
Ugamak	54°14.00′	164°48.00′	54°13.00′	164°48.00′	20	20	20	10
Round	54°12.00′	164°46.50′			.....	20	.....	.....
Sea Lion Rock (Amak)	55°28.00′	163°12.00′			20	20	20	10
Amak+rocks	55°24.00′	163°07.00′	55°26.00′	163°10.00′	20	20	.....	.....

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[64 FR 62014, Nov. 15, 1999]

TABLE 13 TO 50 CFR PART 679.—STELLER SEA LION PROTECTION AREAS IN THE GULF OF ALASKA

[Sheet 1 of 2: Effective through December 31, 1999]

Management area/Island/Site	Boundaries to				Directed fishing for pollock prohibited within * * * (nm)		Trawling prohibited within * * * (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Gulf of Alaska								
Bird	54°40.50′	163°18.00′			10	10	.....	.....
South Rocks	54°18.00′	162°41.50′			.....	10	.....	.....
Clubbing Rocks	54°42.00′	162°26.50′	54°43.00′	162°26.50′	10	10	.....	10
Pinnacle Rock	54°46.00′	161°46.00′			10	10	.....	10
Sushilnoi Rocks	54°50.00′	161°44.50′			.....	10	.....	.....
Olga Rocks	55°00.50′	161°29.50′	54°59.00′	161°31.00′	10	10	.....	.....
Jude	55°16.00′	161°06.00′			10	10	.....	.....
The Whaleback	55°16.50′	160°06.00′			10	10	.....	.....
Chernabura	54°47.50′	159°31.00′	54°45.50′	159°33.50′	10	10	.....	10
Castle Rock	55°17.00′	159°30.00′			.....	10	.....	.....
Atkins	55°03.50′	159°19.00′			10	10	.....	10
Spitz	55°47.00′	158°54.00′			.....	10	.....	.....
Kak	56°17.00′	157°51.00′			.....	10	.....	.....
Lighthouse Rocks	55°47.50′	157°24.00′			10	10	.....	.....
Sutwik	56°31.00′	157°20.00′	56°32.00′	157°21.00′	.....	10	.....	.....
Chowiet	56°00.50′	156°41.50′	56°00.50′	156°42.00′	10	10	.....	10
Nagai Rocks	55°50.00′	155°46.00′			10	10	.....	.....
Chirikof	55°46.50′	155°39.50′	55°46.50′	155°43.00′	10	10	.....	10
Puale Bay	57°41.00′	155°23.00′			10	10	.....	.....
Takli	58°03.00′	154°27.50′	58°02.00′	154°31.00′	.....	10	.....	.....
Cape Gull	58°13.50′	154°09.50′	58°12.50′	154°10.50′	.....	10	.....	.....

[64 FR 62015, Nov. 15, 1999]

TABLE 13 TO 50 CFR PART 679.—STELLER SEA LION PROTECTION AREAS IN THE GULF OF ALASKA

[Sheet 2 of 2: Effective through December 31, 1999]

Management area/Island/Site	Boundaries to				Directed fishing for pollock prohibited within * * * (nm)		Trawling prohibited within * * * (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Sitkinak/Cape Sitkinak	56°34.50′	153°51.50′			10	10	.....	.....
Kodiak/Cape Ugat	57°52.00′	153°51.00′			10	10	.....	.....
Shakun Rock	58°32.50′	153°41.50′			10	10	.....	.....
Twoheaded Island	56°54.50′	153°33.00′	56°53.50′	153°35.50′	10	10	.....	.....
Cape Douglas	58°51.50′	153°14.00′			.....	10	.....	.....
Latax Rocks	58°42.00′	152°28.50′	58°40.50′	152°30.00′	10	10	.....	.....
Ushagat/SW	58°55.00′	152°22.00′			.....	10	.....	.....
Ugak	57°23.00′	152°15.50′	57°22.00′	152°19.00′	.....	10	.....	.....
Sea Otter Island	58°31.50′	152°13.00′			10	10	.....	.....
Long	57°47.00′	152°13.00′			10	.....	.....	.....
Kodiak/Cape Chiniak	57°37.50′	152°09.00′			10	10	.....	.....
Sugarloaf	58°53.00′	152°02.00′			10	10	.....	10
Sea Lion Rocks (Marmot)	58°21.00′	151°48.50′			10	10	.....	.....
Marmot	58°14.00′	151°47.50′	58°10.00′	151°51.00′	10	10	.....	10
Perl	59°06.00′	151°39.50′			10	10	.....	.....
Outer (Pye) Island	59°20.50′	150°23.00′	59°21.00′	150°24.50′	10	10	.....	10
Steep Point	59°29.00′	150°15.00′			.....	10	.....	.....
Chiswell Islands	59°36.00′	149°34.00′			10	10	.....	.....
Wooded Island (Fish)	59°53.00′	147°20.50′			10	10	.....	.....
Glacier Island	60°51.00′	147°09.00′			10	10	.....	.....
Seal Rocks	60°10.00′	146°50.00′			10	10	.....	.....
Cape Hinchinbrook	60°14.00′	146°38.50′			.....	10	.....	.....
Hook Point	60°20.00′	146°15.50′			.....	10	.....	.....
Cape St. Elias	59°48.00′	144°36.00′			10	10	.....	.....

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Additional closures along the Aleutian Island chain that extend into statistical area 610 of the Gulf of Alaska are displayed in Table 13 to this part.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[64 FR 62015, Nov. 15, 1999]

TABLE 14 TO PART 679.—IFQ PRIMARY PORTS

Port	North Latitude	West Longitude
Akutan	54°08′05″	165°46′20″
Bellingham	48°45′04″	122°30′02″
Cordova	60°33′00″	145°45′00″
Craig	55°28′30″	133°09′00″
Dutch Harbor/Unalaska	53°53′27″	166°32′05″
Excursion Inlet	58°25′00″	135°26′30″
Homer	59°38′40″	151°33′00″
Ketchikan	55°20′30″	131°38′45″
King Cove	55°03′20″	162°19′00″
Kodiak	57°47′20″	152°24′10″
Pelican	57°57′30″	136°13′30″
Petersburg	56°48′10″	132°58′00″
St. Paul	57°07′20″	170°16′30″
Sand Point	55°20′15″	160°30′00″
Seward	60°06′30″	149°26′30″
Sitka	57°03′	135°20′
Yakutat	59°33′	139°44′

[64 FR 62016, Nov. 15, 1999]

TABLE 15 TO PART 679.—IFQ/CDQ GEAR CODES AND DESCRIPTIONS

IFQ/CDQ gear code	IFQ/CDQ gear description
05	Hand troll.
15	Power gurdy troll.
25	Dinglebar troll.
26	Jigs.
61	Hook-and-line.
91	Pot.

[64 FR 62016, Nov. 15, 1999]

EFFECTIVE DATE NOTE: At 65 FR 3900, Jan. 25, 2000, part 679 was amended by reserving Tables 16 through 19; by suspending Tables 4, 5, and 6, and by adding Tables 12, 13, and 20, effective Jan. 20, 2000, through July 19, 2000. At 65 FR 36795, June 12, 2000, the effective date was extended to Dec. 31, 2000. At 65 FR 6561, Feb. 10, 2000, Table 20 was corrected in the entry for ''seguam Island'' in the fifth column of the table by removing the Longitude ''172 33.06 W'' and adding in its place ''172 33.60 W'', effective Feb. 4, 2000. For the convenience of the user, the added tables follow:

TABLE 12 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE BERING SEA SUBAREA

Management area/island/site [1, 2, 3]	Boundaries to				Directed fishing for pollock prohibited within * * * (nm)		Trawling prohibited within (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	Jan. 1 through April 15	Year-round
Walrus	57 11.00 N	169 56.00 W	.....	.....	20	20	.....	10
Uliaga	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	.....	20	.....	.....
Chuginadak	52 46.70 N	169 41.90 W	.....	.....	.....	20	.....	.....
Kagamil	53 02.50 N	169 41.00 W	.....	.....	.....	20	.....	.....
Samalga	52 46.00 N	169 15.00 W	.....	.....	.....	20	.....	.....
Adugak	52 55.00 N	169 10.50 W	.....	.....	20	20	.....	10
Umnak/Cape Aslik	53 25.00 N	168 24.50 W	.....	.....	20	20	.....	.....
Ogchul	52 59.71 N	168 24.24 W	.....	.....	20	20	.....	10
Bogoslof/Fire Island	53 55.69 N	168 02.05 W	.....	.....	20	20	.....	10
Emerald	53 17.50 N	167 51.50 W	.....	.....	.....	20	.....	.....
Unalaska/Cape Izigan	53 13.64 N	167 39.37 W	.....	.....	20	20	.....	.....
Unalaska/Bishop Pt	53 58.40 N	166 57.50 W	.....	.....	20	20	.....	.....
Akutan/Reef-lava	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	20	20	.....	.....
Old Man Rocks	53 52.20 N	166 04.90 W	.....	.....	20	20	.....	.....
Akutan/Cape Morgan	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	20	20	10
Rootok	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	.....	20	.....	.....
Akun/Billings Head	54 17.61 N	165 32.06 W	54 17.57 N	165 31.71 W	20	20	20	10
Tanginak	54 12.00 N	165 19.40 W	.....	.....	20	.....	.....	.....
Tigalda/Rocks NE	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	20	.....	.....
Unimak/Cape Sarichef	54 34.30 N	164 56.80 W	.....	.....	20	20	.....	.....
Aiktak	54 10.99 N	164 51.15 W	.....	.....	20	.....	.....	.....
Ugamak	54 13.50 N	164 47.50 W	54 13.00 N	164 47.00 W	20	20	20	10
Round	54 12.05 N	164 46.60 W	.....	.....	.....	20	.....	.....
Sea Lion Rock (Amak)	55 27.79 N	163 12.24 W	.....	.....	20	20	20	10
Amak and rocks	55 24.20 N	163 09.60 W	55 25.90 N	163 09.90 W	20	20	.....	.....

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

TABLE 13 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE GULF OF ALASKA

Management area/island/site [1, 2, 3]	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm) (year-round)
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	
Bird	54 40.16 N	163 17.57 W	.....	.....	10	10	.....
South Rocks	54 18.14 N	162 41.52 W	.....	.....	10	10	.....
Clubbing Rocks	54 41.98 N	162 26.74 W	54 42.00 N	162 26.50 W	10	10	10
Pinnacle Rock	54 46.06 N	161 45.85 W	.....	.....	10	10	10
Sushilnoi Rocks	54 49.30 N	161 42.73 W	.....	.....	.....	10	.....
Olga Rocks	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10	10	.....
Jude	55 15.75 N	161 06.27 W	.....	.....	10	10	.....
Sea Lion Rocks (Shumagins) [4]	55 04.70 N	160 31.04 W	.....	.....	10	10	.....
The Whaleback	55 16.82 N	160 05.04 W	.....	.....	10	10	.....
Chernabura	54 45.18 N	159 32.99 W	54 44.87 N	159 35.74 W	10	10	10
Castle Rock	55 16.47 N	159 29.77 W	.....	.....	.....	10	.....
Atkins	55 03.50 N	159 18.50 W	.....	.....	10	10	10
Spitz	55 46.80 N	158 53.20 W	.....	.....	.....	10	.....
Mitrofania	55 50.00 N	158 42.00 W	.....	.....	10	10	.....
Kak	56 17.30 N	157 50.10 W	.....	.....	.....	10	.....
Lighthouse Rocks	55 46.79 N	157 24.89 W	.....	.....	10	10	.....
Sutwik	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	.....	10	.....
Chowiet	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	10	10	10
Nagai Rocks	55 50.00 N	155 46.00 W	.....	.....	10	10	.....
Chirikof	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	10	10	10
Puale Bay	57 40.60 N	155 23.10 W	.....	.....	10	10	.....
Kodiak/Point Ikolik	57 17.12 N	154 48.29 W	.....	.....	10	.....	.....
Takli	58 01.75 N	154 31.25 W	.....	.....	.....	10	.....
Cape Gull	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	.....	10	.....
Sitkinak/Cape Sitkinak	56 34.30 N	153 50.96 W	56 34.20 N	153 51.05 W	10	10	.....
Kodiak/Cape Ugat	57 52.41 N	153 50.97 W	.....	.....	10	10	.....
Kodiak/Cape Barnabas	57 10.20 N	152 53.05 W	.....	.....	10	10	.....
Kodiak/Gull Point	57 21.45 N	152 36.30 W	.....	.....	10	10	.....
Shakun Rock	58 32.80 N	153 41.50 W	.....	.....	10	10	.....
Twoheaded Island	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10	10	.....
Cape Douglas (Shaw Island)	59 00.00 N	153 22.50 W	.....	.....	.....	10	.....
Latax Rocks	58 40.10 N	152 31.30 W	.....	.....	10	10	.....
Ushagat/SW	58 54.75 N	152 22.20 W	.....	.....	.....	10	.....
Ugak	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	.....	10	.....
Sea Otter Island	58 31.15 N	152 13.30 W	.....	.....	10	10	.....
Long	57 46.82 N	152 12.90 W	.....	.....	10	.....	.....
Kodiak/Cape Chiniak	57 37.90 N	152 08.25 W	.....	.....	10	10	.....
Sugarloaf	58 53.25 N	152 02.40 W	.....	.....	10	10	10
Sea Lion Rocks (Marmot)	58 20.53 N	151 48.83 W	.....	.....	10	10	.....
Marmot	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	10	10	10

TABLE 13 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE GULF OF ALASKA—Continued

Management area/island/site [1, 2, 3]	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm) (year-round)
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	
Perl	59 05.75 N	151 39.75 W			10	10	
Outer (Pye) Island	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	10	10	10
Steep Point	59 29.05 N	150 15.40 W				10	
Chiswell Islands	59 36.00 N	149 34.00 W			10	10	
Rugged Island	59 49.80 N	149 23.30 W	59 51.00 N	149 25.30 W	10		
Point Elrington [4]	59 56.00 N	148 15.20 W					
Wooded Island (Fish)	59 52.90 N	147 20.65 W			10	10	
The Needles [4]	60 06.64 N	147 36.17 W					
Glacier Island	60 51.30 N	147 14.50 W			10	10	
Seal Rocks	60 09.78 N	146 50.30 W			10	10	
Cape Hinchinbrook	60 14.00 N	146 38.50 W				10	
Hook Point	60 20.00 N	146 16.50 W				10	
Cape St. Elias	59 48.00 N	144 35.50 W			10	10	

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.

[2] Additional closures along the Aleutian Island chain that extend into statistical area 610 of the Gulf of Alaska are displayed in Table 13 to this part.

[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[4] Vessels less than or equal to 60 ft. (18.3m) LOA are exempt from the 20 nm closure at Sea Lion Rocks.

[5] Restrictions at Point Elrington and The Needles will be considered by the Alaska Board of Fisheries because these areas fall completely within the State of Alaska management area of Prince William Sound.

TABLE 20 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE ALEUTIAN ISLANDS SUBAREA

Management area/island/site [1, 2, 3]	Boundaries to				Trawling prohibited within—(nm) year-round
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Yunaska Island	52 41.40 N	170 36.35 W	.....	.....	10
Kasatochi Island	52 11.11 N	175 31.00 W	.....	.....	10
Adak Island	51 35.50 N	176 57.10 W	51 37.50 N	176 59.60 W	10
Gramp Rock	51 28.87 N	178 20.58 W	.....	.....	10
Tag Island	51 33.50 N	178 34.50 W	.....	.....	10
Ulak Island	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10
Semisopochnoi/Pochnoi Point	51 57.30 N	179 46.00 E	.....	.....	10
Semisopochnoi/Petrel Point	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Amchitka Island/East Cape	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka Is/Column Rocks	51 32.32 N	178 49.28 E	.....	.....	10
Ayugadak Point	51 45.36 N	178 24.30 E	.....	.....	10
Kiska Island/Lief Cove	51 57.19 N	177 20.41 E	51 57.24 N	177 20.49 E	10
Kiska Island/Cape St. Stephen	51 52.50 N	177 13.00 E	51 53.50 N	177 12.00 E	10
Buldir Island	52 20.38 N	175 53.85 E	52 20.25 N	175 54.03 E	10
Agattu Island/Cape Sabek	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Agattu Island/Gillon Pt	52 24.13 N	173 21.31 E	.....	.....	10
Attu Island/Caper Wrangell	52 55.36 N	172 27.22 E	52 55.34 N	172 27.55 E	10
Seguam Island	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Agligadak Island	52 06.09 N	172 54.23 W	.....	.....	20

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

SOURCE: 64 FR 68248, Dec. 6, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 697.1 Purpose and scope.

The regulations in this part are issued under the authority of section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*, and section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, 16 U.S.C. 1851 note, and govern fishing in the EEZ on the Atlantic Coast for species covered by those acts.

§ 697.2 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in §§ 600.10 and 648.2 of this chapter, for the purposes of this part, the following terms have the following meanings:

American lobster or lobster means *Homarus americanus.*

Approved TED means any approved TED as defined at § 217.12 of this title.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis* found in the waters of the Atlantic Ocean north of Key West, FL.

Atlantic sturgeon means members of stocks or populations of the species *Acipenser oxyrhynchus.*

Berried female means a female American lobster bearing eggs attached to the abdominal appendages.

Block Island Southeast Light means the aid to navigation light located at Southeast Point, Block Island, RI, and defined as follows: Located at 40°09.2′ N. lat., 71°33.1′ W. long; is 201 ft (61.3 m) above the water; and is shown from a brick octagonal tower 67 ft (20.4 m) high attached to a dwelling on the southeast point of Block Island, RI.

BRD means bycatch reduction device.

Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

Certified BRD means any BRD, as defined in part 622, Appendix D of this chapter: Specifications for Certified BRDs.

Charter or head boat means any vessel carrying fishing persons or parties for a per capita fee, for a charter fee, or any other type of fee.

Commercial dive vessel means any vessel carrying divers for a per capita fee, a charter fee, or any other type of fee.

Commercial purposes means for the purpose of selling, trading, transferring, or bartering all or part of the fish harvested.

Commission means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by Congress in Pub. L. 77–539 and Pub. L. 81–721.

Continuous transit means that a vessel does not have fishing gear in the water and remains continuously underway.

CPH means Confirmation of Permit History.

Crab trawl means any trawl net that is rigged for fishing and has a mesh size of 3.0 inches (7.62 cm), as measured between the centers of opposite knots when pulled taut.

Cull American lobster means a whole American lobster that is missing one or both claws.

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

De minimis state means any state where the landings are so low that the Commission's Fisheries Management Board has exempted that state from some of its regulatory responsibilities under an Interstate Fishery Management Plan.

Egg Production Rebuilding Schedule means the schedule identified in section 2.5 of Amendment 3 to the Commission's ISFMP.

Escape vent means an opening in a lobster trap designed to allow lobster smaller than the legal minimum size to escape from the trap.

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, for the American lobster fishery, from May 1 through April 30 of the following year.

Flynet means any trawl net, except shrimp trawl nets containing certified BRDs and approved TEDs, when required under §227.72(e)(2) of this title, and except trawl nets that comply with the gear restrictions specified at §648.104 of this chapter for the summer flounder fishery and contain an approved TED, when required under §227.72 (e)(2) of this title.

Ghost panel means a panel, or other mechanism, designed to allow for the escapement of lobster after a period of time if the trap has been abandoned or lost.

ISFMP means the Commission's Interstate Fishery Management Plan for American Lobster, as amended.

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

Lobster day-at-sea with respect to the American lobster fishery means each 24-hour period 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 American lobster.

Lobster permit means a Federal limited access American lobster permit.

Lobster trap trawl means 2 or more lobster traps, all attached to a single ground line.

Management area means each of the geographical areas identified in this part for management purposes under the lobster ISFMP.

Montauk light means the aid to navigation light located at Montauk Point, NY, and defined as follows: Located at 41°04.3′ N. lat., 71°51.5′ W. long.; is shown from an octagonal, pyramidal tower, 108 ft (32.9 m) high; and has a covered way to a dwelling.

Natural Atlantic sturgeon means any Atlantic sturgeon that is not the result of a commercial aquaculture operation, and includes any naturally occurring Atlantic sturgeon (those Atlantic sturgeon naturally spawned and grown in rivers and ocean waters of the Atlantic Coast).

Parts thereof means any part of an American lobster. A part of a lobster counts as one lobster.

Point Judith Light means the aid to navigation light located at Point Judith, RI, and defined as follows: Located at 41°21.7′ N. lat., 71°28.9′ W. long.; is 65 ft (19.8 m) above the water; and is shown from an octagonal tower 51 ft (15.5 m) high.

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

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and head boats and commercial dive vessels are not considered recreational fishing vessels.

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

Retain means to fail to return any species specified under § 697.7 of this chapter to the sea immediately after the hook has been removed or after the species has otherwise been released from the capture gear.

Sea sampler/observer means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits.

Shrimp trawl net means any trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net, as defined in § 622.2 of this chapter, that is rigged for fishing and has a headrope length longer than 16 ft (4.9 m).

Stocked Atlantic sturgeon means any Atlantic sturgeon cultured in a hatchery that is placed in rivers and ocean waters of the Atlantic Coast to enhance the Atlantic sturgeon spawning stocks.

TED means Turtle Excluder Device, which is a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Trap means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobsters. Red crab fishing gear, fished deeper than 200 fathoms (365.8 m), is gear deemed not to be a trap for the purpose of this part, and is not subject to the provisions of this part.

V-notched American lobster means any female American lobster bearing a V-shaped notch in the flipper next to and to the right of the center flipper as viewed from the rear of the lobster (underside of the lobster down and tail toward the viewer), or any female American lobster that is mutilated in a manner that could hide or obliterate such a mark.

V-shaped notch means a straight-sided triangular cut, without setal hairs, at least ¼ inch (0.64 cm) in depth and tapering to a point.

Weakfish means members of the stock or population of the species *Cynoscion regalis,* found along the Atlantic Coast from southern Florida to Massachusetts Bay.

Whole American lobster means a lobster with an intact and measurable body (tail and carapace). An American lobster with an intact and measurable body that is missing one or both claws, i.e., a cull lobster, is considered to be a whole American lobster.

(b) [Reserved]

§ 697.3 Relation to other Federal and state laws.

(a) The provisions of sections 307 through 311 of the Magnuson-Stevens Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson-Stevens Act.

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

(c) The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing and American lobster fishing. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement or measure.

§ 697.4 Vessel permits and trap tags.

(a) *Limited access American lobster permit.* Any vessel of the United States that fishes for, possesses, or lands American lobster in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access lobster permit. This requirement does not apply to: charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if such lobsters are not intended for, nor used, in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster.

(1) *Eligibility in 1999 and thereafter.* To be eligible for issuance or renewal of a Federal limited access lobster permit for fishing year 1999 and thereafter, a vessel must:

(i) Have been issued a Federal limited access lobster permit for the preceding fishing year by the last day of such fishing year unless a CPH has been issued as specified in paragraph (a)(5) of this section or unless otherwise authorized by the Regional Administrator;

(ii) Be replacing a vessel that was issued a Federal limited access lobster permit for the preceding year; or

(iii) Be replacing a vessel issued a CPH.

(2) *Qualification restriction*. Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a Federal limited access lobster permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Administrator will determine who is eligible for the permit or a CPH under paragraph (a)(3) of this section.

(3) *Change in ownership*. The fishing and permit history, and management area designation, when required 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, and management area designation, for the purposes of replacing the vessel.

(4) *Consolidation restriction*. Federal limited access American lobster permits, and any rights or privileges associated thereto, may not be combined or consolidated.

(5) *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 (o) 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 been 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 means 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 (c) of this section.

(6) *Restriction on permit splitting*. A Federal limited access lobster permit will not be issued to a vessel or its replacement, or remain valid, if the vessels' permit or fishing history has been used to qualify another vessel for another Federal fishery.

(7) *Management area designations for vessels fishing with traps*. (i) For fishing year 2000 and beyond, it is unlawful for vessels issued a limited access American lobster permit fishing with traps, to retain on board, land, or possess

American lobster in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s).

(ii) For fishing year 2000 and beyond, each owner of a vessel which fishes with traps capable of catching American lobster, applying for a limited access American lobster permit must declare to NMFS in his/her application for a permit or permit renewal, in which management areas described in § 697.18 the vessel will fish.

(iii) A lobster management area designation certificate or limited access American lobster permit shall specify in which lobster management area or areas the vessel may fish.

(iv) Once a vessel has been issued a lobster management area designation certificate or limited access American lobster permit specifying the lobster EEZ management areas in which the vessel may fish, no changes to the EEZ management areas specified may be made for such vessel for the remainder of the fishing year unless such vessel becomes a replacement vessel for another qualified vessel.

(v) A vessel issued a lobster management area designation certificate or limited access American lobster permit specifying more than one EEZ management area must abide by the most restrictive management measures in effect for any one of the specified areas, regardless of the area being fished, for the entire fishing year.

(b) *Condition.* Vessel owners who apply for a Federal limited access American lobster permit under this section must agree, as a condition of the permit, that the vessel and vessel's fishing, catch, 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. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(c) *Vessel permit application.* Applicants for a Federal limited access American lobster permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. To be complete, an application for a Federal limited access American lobster permit must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; lobster management area designation the vessel will fish in, as specified in § 697.18, if fishing with traps capable of catching American lobster; home port and principal port of landing; overall length; gross tonnage; net tonnage; 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; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation; 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 Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having more than a 25 percent interest; and name and signature of the owner or the owner's authorized representative. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Administrator at least 30 days prior to the date on which the permit is needed by the applicant. The Regional Administrator shall notify the applicant of any deficiency in the application.

(d) *Trap tag application, lost and replacement tags.* (1) Beginning fishing year 2000, any lobster trap fished in

Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member.

(2) Trap tags shall be issued by the Regional Administrator, or, by state agencies, by agreement with the Regional Administrator, provided that such state tagging programs accurately identify the Federal limited access American lobster permit holder. NMFS will provide notice to American lobster permit holders as to the procedure for applying for trap tags and any required fees.

(3) Vessel owners or operators are required to report to the Regional Administrator lost, destroyed, and missing tags as soon as feasible within 7 days after the tags have been discovered lost, destroyed, or missing, by letter or fax to the Regional Administrator.

(4) Requests for replacement of lost tags in excess of the tag limit specified in §697.19(c) must be submitted in writing to the Regional Administrator on an appropriate form obtained from the Regional Administrator and signed by the permit holder or authorized representative. The form and request for replacement tags will be reviewed by the Regional Administrator on a case-by-case basis and a decision will be reached on the number of replacement tags to be issued, if any. A check for the cost of the replacement tags must be received before tags will be reissued.

(e) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit or trap tags required under this section. Fee amounts shall be 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. Fees may not exceed such costs and shall be specified with each application form. The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue a permit or tags, as applicable, within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received;

(ii) The application was not received by the Regional Administrator by any 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 or the number of tags requested exceeds the applicable tag limit specified in §697.19(c);

(iv) The applicant has failed to meet any other application or tag 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.

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

(h) *Duration.* A permit will continue in effect until the renewal date 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 (k) of this section.

(i) *Reissuance.* A vessel permit may be reissued by the Regional Administrator when requested in writing by the owner or authorized representative, stating the need for reissuance, the name of the vessel, and the number of the permit requested to be reissued. An application for a reissued permit is not considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(j) *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.

(k) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Administrator. If the written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

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

(m) *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. Any permit issued under this part must be maintained in legible condition.

(n) *Sanctions.* Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

(o) *Abandonment or voluntary relinquishment of limited access American lobster permits.* Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years. If a vessel's Federal limited access American lobster permit or CPH is voluntarily relinquished to the Regional Administrator, or abandoned through failure to renew or otherwise, no Federal limited access American lobster permit or CPH may be reissued or renewed based on the qualifying vessel's history.

§ 697.5 Operator permits.

(a) *General.* Any operator of a vessel issued a Federal limited access American lobster permit under § 697.4(a), or any operator of a vessel of the United States that fishes for, possesses, or lands American lobsters, harvested in or from the EEZ must have been issued and carry on board a valid operator's permit issued under this section. This requirement does not apply to: Charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if said lobsters are not intended for nor used in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Administrator. To be complete, an application must contain at least the following information, and any other information specified on the application form or otherwise 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. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days prior to 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.

(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 vessels 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 permitted under § 697.4. 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 on board 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 off loading. 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 or measure.

(d) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit required under this section. The amount of the fee shall be 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 shall be specified with each application form. The applicable 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.* 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 the 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 application fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

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

(g) *Duration.* An operator permit is valid until it is revoked, suspended, or modified under subpart D of 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 (j) of this section.

(h) *Reissuance.* An operator permit may be reissued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the number of the permit requested to be reissued. An applicant for a reissued operator permit must also provide two recent (no more than 1 year old) color passport-size photos of the applicant. An application for a reissued permit is not considered a new application. An appropriate fee may be charged.

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

(j) *Change in 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.

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

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

(m) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

(n) *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.

§697.6 Dealer permits.

(a) Any person who receives, for a commercial purpose (other than solely for transport on land), American lobster from the owner or operator of a vessel issued a valid permit under this part, or any person who receives, for a commercial purpose (other than solely for transport on land), American lobster, managed by this part, must have been issued, and have in his/her possession, a valid permit issued under this section.

(b) *Dealer application.* Applicants for a dealer permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Administrator. To be complete, an application must contain

at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares, must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one partner, names of all partners having more than a 25 percent interest; and name and signature of all partner or partners authorized must be included with the application. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days prior to the date on which the applicant needs the permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(c) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit required under this section. The amount of the fee shall be 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 shall be specified with each application form. The applicable 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.

(d) *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 has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received. 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 notification, the application will be considered abandoned.

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

(f) *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 (i) of this section.

(g) *Reissuance.* A dealer permit may be reissued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the number of the permit requested to be reissued. An application for a reissued permit is not considered a new application. An appropriate fee may be charged.

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

(i) *Change in application information.* Notice of a change in the dealers 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.

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

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

(l) *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 under this part must comply with the more restrictive requirement.

(m) *Sanctions.* Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

§697.7 Prohibitions.

(a) *Atlantic Coast weakfish fishery.* In addition to the prohibitions set forth in §600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for, harvest, or possess any weakfish less than 12 inches (30.5 cm) in total length (measured as a straight line along the bottom of the fish from the tip of the lower jaw with the mouth closed to the end of the lower tip of the tail) from the EEZ.

(2) Retain any weakfish less than 12 inches (30.5 cm) in total length taken in or from the EEZ.

(3) Fish for weakfish in the EEZ with a minimum mesh size less than 3¼-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3¾-inch (9.5 cm) diamond stretch mesh for trawls and 2⅞-inch (7.3 cm) stretch mesh for gillnets.

(4) Possess more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3¼-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3¾-inch (9.5 cm) diamond stretch mesh for finfish trawls and 2⅞-inch (7.3 cm) stretch mesh for gillnets.

(5) Fish using a flynet in the EEZ off North Carolina in the area bounded as follows:

(i) On the north by a straight line connecting points 35°10.8′ N. lat., 75°29.2′ W. long. (3 nm off Cape Hatteras) and 35°03.5′ N. lat., 75°11.8′ W. long. (20 nm off Cape Hatteras).

(ii) The east by a straight line connecting points 35°03.5′ N. lat., 75°11.8′ W. long. (20 nm off Cape Hatteras) and 33°21.1′ N. lat., 77°57.5′ W. long., (about 30 nm off Cape Fear on the extension of the North Carolina/South Carolina state line into the EEZ).

(iii) On the south by a straight line connecting points 33°21.1′ N. lat., 77°57.5′ W. long., and 33°48.8′ N. lat., 78°29.7′ W. long. (3 nm off Little River Inlet on the North Carolina/South Carolina state line).

(iv) On the west by state waters.

(6) Possess any weakfish in the closed area of the EEZ, as described in paragraph (a)(5) of this section, when fishing with shrimp trawls or crab trawls.

(7) Land weakfish for commercial purposes caught in the EEZ in any state other than Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina.

(b) *Atlantic striped bass fishery.* In addition to the prohibitions set forth in §600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for Atlantic striped bass in the EEZ.

(2) Harvest any Atlantic striped bass from the EEZ.

(3) Possess any Atlantic striped bass in or from the EEZ, except in the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel while in the EEZ and the vessel is in continuous transit.

(4) Retain any Atlantic striped bass taken in or from the EEZ.

(c) *American lobster.* (1) In addition to the prohibitions specified in §600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under §697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in §697.24 to do any of the following:

(i) Retain on board, land, or possess at or after landing, whole American lobsters that fail to meet the minimum carapace length standard specified in §697.20(b). All American lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses

American lobsters for a commercial purpose.

(i) Retain on board, land, or possess, up to the time when a dealer first receives or possesses American lobster for a commercial purpose, any American lobster or parts thereof in violation of the mutilation standards specified in § 697.20(c).

(iii) Retain on board, land, or possess any berried female American lobster specified in § 697.20(d).

(iv) Remove eggs from any berried female American lobster, land, or possess any such lobster from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

(v) Retain on board, land, or possess any V-notched female American lobster.

(vi) Spear any American lobster, or land or possess any American lobster which has been speared.

(vii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel trap gear in excess of the trap limits specified in § 697.19.

(viii) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not identified, vented, paneled, and of a volume larger than specified in accordance with the requirements in § 697.21, unless such gear has been rendered unfishable.

(ix) Beginning May 1, 2000, possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not tagged in accordance with the requirements in § 697.19, unless such gear has been rendered unfishable.

(x) Beginning May 1, 2000, fail to produce, or cause to be produced, lobster trap tags when requested by an authorized officer.

(xi) Beginning May 1, 2000, reproduce, or cause to be reproduced, lobster trap tags without the written consent of the Regional Administrator.

(xii) Beginning May 1, 2000, possess a lobster trap tag, tag a lobster trap with, or use, a lobster trap tag that has been reported lost, missing, destroyed, or issued to another vessel.

(xiii) Beginning May 1, 2000, sell, transfer, or give away lobster trap tags that have been reported lost, missing, destroyed, or issued to another vessel.

(xiv) Fail to affix and maintain permanent markings, as required by § 697.8.

(xv) Fish for, retain on board, land, or possess American lobsters, unless the operator of the vessel has been issued an operator's permit under § 697.5, and the permit is on board the vessel and is valid.

(xvi) Fail to report to the Regional Administrator within 15 days any change in the information contained in the permit application as required under § 697.4(k) or § 697.5(j).

(xvii) Make any false statement in connection with an application under § 697.4, § 697.5, or § 697.6.

(xviii) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any American lobsters, unless the dealer has a valid Federal Dealer's Permit issued under § 697.6.

(xix) Refuse or fail to carry a sea sampler/observer if requested to do so by the Regional Administrator.

(xx) Fail to provide a sea sampler/observer with required food, accommodations, access, and assistance, as specified in § 697.12.

(xxi) Violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xxii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ from a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps.

(xxiii) Fish for, take, catch, or harvest lobster on a fishing trip in or from the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xxiv) Possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by §648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or §697.7(c)(2)(i)(C) of this chapter.

(xxv) Transfer or attempt to transfer American lobster from one vessel to another vessel.

(xxvi) Beginning May 1, 2000, possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear in or from the management areas specified in §697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s) as required under §697.4(a)(7).

(2) In addition to the prohibitions specified in §600.725 of this chapter and the prohibitions specified in paragraph (c)(1) of this section, it is unlawful for any person to do any of the following:

(i) Retain on board, land, or possess American lobsters unless:

(A) The American lobsters were harvested by a vessel that has been issued and carries on board a valid Federal limited access American lobster permit under §697.4; or

(B) The American lobsters were harvested by a vessel without a valid Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters; or

(C) The American lobsters were harvested by a charter boat, head boat, or commercial dive vessel that possesses six or fewer American lobsters per person on board the vessel and the lobsters are not intended to be, or are not, traded, bartered, or sold; or

(D) The American lobsters were harvested by a recreational fishing vessel; or

(E) The American lobsters were harvested by a vessel or person holding a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in §697.24.

(ii) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any American lobsters from a vessel, unless the vessel has been issued a valid Federal limited access American lobster permit under §697.4, or the American lobsters were harvested by a vessel without a valid Federal limited access American lobster permit that fishes for American lobsters exclusively in state waters or unless the vessel or person holds a valid State of Maine American lobster permit or license and that is fishing under the provisions of and in the areas designated in §697.24.

(iii) To be, or act as, an operator of a vessel fishing for or possessing American lobsters in or from the EEZ, or issued a Federal limited access American lobster permit under §697.4, without having been issued and possessing a valid operator's permit under §697.5.

(iv) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, American lobsters taken from or harvested by a fishing vessel issued a Federal limited access American lobster permit, unless in possession of a valid dealer's permit issued under §697.6.

(v) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, American lobsters caught by a vessel other than one issued a valid Federal limited access American lobster permit under §697.4, or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in §697.24, unless the American lobsters were harvested by a vessel without a Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters.

(vi) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved sea

sampler/observer 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.

(vii) Refuse to carry a sea sampler/observer if requested to do so by the Regional Administrator.

(viii) Refuse reasonable assistance to either a NMFS-approved sea sampler/observer conducting his or her duties aboard a vessel.

(ix) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any American lobster.

(x) Violate any provision of this part, the ACFCMA, the Magnuson-Stevens Act, or any regulation, permit, or notification issued under the ACFCMA, the Magnuson-Stevens Act, or these regulations.

(xi) Retain on board, land, or possess any American lobsters harvested in or from the EEZ in violation of § 697.20.

(xii) Ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster in violation of § 697.20.

(xiii) Fish, or be in the areas described in § 697.23(b)(2), (c)(2), (d)(2), and (e)(2) on a fishing vessel with mobile gear during the time periods specified in § 697.23(b)(1), (c)(1), (d)(1), and (e)(1), except as provided in § 697.23(b)(1), (c)(1), (d)(1), and (e)(1).

(xiv) Fish, or be in the areas described in § 697.23(b)(2), (c)(2), and (d)(2) on a fishing vessel with lobster trap gear on board during the time periods specified in § 697.23(b)(1), (c)(1), and (d)(1).

(xv) Deploy or fail to remove lobster trap gear in the areas described in § 697.23(b)(2), (c)(2), and (d)(2) during the time periods specified in § 697.23(b)(1), (c)(1), and (d)(1).

(xvi) Violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xvii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ on a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps.

(xviii) Fish for, take, catch, or harvest lobster on a fishing trip in the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xix) Possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xx) Transfer or attempt to transfer American lobster from one vessel to another vessel.

(3) *Presumptions.* (i) Any person possessing, or landing American lobsters or parts thereof at or prior to the time when those American lobsters are landed, or are received or possessed by a dealer for the first time, is subject to all of the prohibitions specified in paragraph (c) of this section, unless the American lobsters were harvested by a vessel without a Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters; or are from a charter, head, or commercial dive vessel that possesses or possessed six or fewer American lobsters per person aboard the vessel and the lobsters are not intended for sale, trade, or barter; or are from a recreational fishing vessel.

(ii) American lobsters or parts thereof that are possessed, or landed at or prior to the time when the American lobsters are received by a dealer, or whole American lobsters that are possessed by a dealer, are presumed to have been harvested from the EEZ or

by a vessel with a Federal limited access American lobster permit. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel without a Federal limited access American lobster permit and fishing exclusively for American lobsters in state or foreign waters will be sufficient to rebut this presumption.

(iii) The possession of egg-bearing female American lobsters, V-notched female American lobsters, American lobsters that are smaller than the minimum size set forth in § 697.20(b), or lobster parts, possessed at or prior to the time when the aforementioned lobsters or parts are received by a dealer, will be *prima facie* evidence that such American lobsters or parts were taken or imported in violation of these regulations. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

(d) *Atlantic sturgeon fishery.* In addition to the prohibitions set forth in § 600.725, it is unlawful for any person to do any of the following:

(1) Fish for Atlantic sturgeon in the EEZ.

(2) Harvest any Atlantic sturgeon from the EEZ.

(3) Possess any natural or stocked Atlantic sturgeon in or from the EEZ.

(4) Retain any Atlantic sturgeon taken in or from the EEZ.

(5) Possess any natural Atlantic sturgeon parts, including Atlantic sturgeon eggs, in the EEZ.

§ 697.8 Vessel identification.

(a) *Vessel name and official number.* Each fishing vessel issued a limited access American lobster permit and over 25 ft (7.6 m) in registered length must:

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

(2) Have its official number displayed 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, each fishing vessel issued a limited access American lobster permit must display its official number 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 issued a limited access American lobster permit 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 over 25 ft (7.6 m) in registered length, fishing in the EEZ and 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 aforementioned requirements.

§ 697.9 Facilitation of enforcement.

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

(b) *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 enforcement officer. Vessels not required to have VHF–FM radios by the Coast Guard are exempt from this requirement.

§ 697.10 Penalties.

See § 600.735 of this chapter.

§ 697.11 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties,

permit sanctions, seizures, and forfeitures under the Atlantic Striped Bass Conservation Act and the ACFCMA, and to the regulations of this part.

§ 697.12 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel issued a Federal limited access American lobster permit to carry a NMFS-approved sea sampler/observer. If requested by the Regional Administrator to carry a sea sampler/observer, a vessel may not engage in any fishing operations in the respective fishery unless a sea sampler/observer is on board, or unless the requirement is waived, as specified in paragraph (c) of this section.

(b) If requested in writing by the Regional Administrator to carry an sea sampler/observer, it is the responsibility of the vessel owner to arrange for and facilitate sea sampler/observer placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Administrator, 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 election letters to vessel owners.

(c) The Regional Administrator may waive in writing the requirement to carry a sea sampler/observer if the facilities on a vessel for housing the sea sampler/observer, or for carrying out sea sampler/observer functions, are so inadequate or unsafe that the health or safety of the sea sampler/observer, 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 sea sampler/observer, 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 sea samplers/observers 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 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 Federal limited access American lobster permit, if requested by the sea sampler/observer also must:

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

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

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

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

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

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

Subpart B—Management Measures

§ 697.17 Non-trap harvest restrictions.

(a) *Non-trap landing limits.* In addition to the prohibitions set forth in § 600.725

of this chapter, it is unlawful for a vessel with any non-trap gear on board capable of catching lobsters, or, that fishes for, takes, catches, or harvests lobster on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(b) All persons that fish for, take, catch, or harvest lobsters on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer American lobster from one vessel to another vessel.

(c) Any vessel on a fishing trip in the EEZ that fishes for, takes, catches, or harvests lobster by a method other than traps may not possess on board, deploy, fish with, or haul back traps.

§ 697.18 Lobster management areas.

The following lobster management areas are established for purposes of implementing the management measures specified in this part. (A copy of a chart showing the American lobster EEZ management areas is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are near-shore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point on Cape Cod:

Point	Latitude	Longitude
A	43°58′ N.	67°22′ W.
B	43°41′ N.	68°00′ W.
C	43°12′ N.	69°00′ W.
D	42°49′ N.	69°40′ W.
E	42°15.5′ N.	69°40′ W.
G	42°05.5′ N.	70°14′ W.
G1	42°04.25′ N.	70°17.22′ W.
G2	42°02.84′ N.	70°16.1′ W.
G3	42°03.35′ N.	70°14.2′ W.

Along the coastline of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to point A.

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are near-shore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
H	41°40′ N.	70°00′ W.
I	41°15′ N.	70°00′ W.
J	41°21.5′ N.	69°16′ W.
K	41°10′ N.	69°06.5′ W.
L	40°55′ N.	68°54′ W.
M	40°27.5′ N.	72°14′ W.
N	40°45.5′ N.	71°34′ W.
O	41°07′ N.	71°43′ W.
P	41°06.5′ N.	71°47′ W.
Q	41°11′30″ N.	71°47′15″ W.
R	41°18′30″ N.	71°54′30″ W.

From point ''R'' along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point ''H'' along the Rhode Island and Massachusetts coast.

(c) *Area 2/3 Overlap.* The Area 2/3 Overlap is defined by the area, comprised entirely of Federal waters, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
K	41°10′ N.	69°06.5′ W.
L	40°55′ N.	68°54′ W.
M	40°27.5′ N.	72°14′ W.
N	40°45.5′ N.	71°34′ W.

(d) *EEZ Offshore Management Area 3.* EEZ Offshore Management Area 3 is defined by the area, comprised entirely of Federal waters, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
A	43°58′ N.	67°22′ W.
B	43°41′ N.	68°00′ W.
C	43°12′ N.	69°00′ W.
D	42°49′ N.	69°40′ W.
E	42°15.5′ N.	69°40′ W.
F	42°10′ N.	69°56′ W.
K	41°10′ N.	69°06.5′ W.
N	40°45.5′ N.	71°34′ W.
M	40°27.5′ N.	72°14′ W.
U	40°12.5′ N.	72°48.5′ W.
V	39°50′ N.	73°01′ W.
X	38°39.5′ N.	73°40′ W.
Y	38°12′ N.	73°55′ W.

Point	Latitude	Longitude
Z	37°12′ N.	74°44′ W.
ZA	35°34′ N.	74°51′ W.
ZB	35°14.5′ N.	75°31′ W.
ZC	35°14.5′ N.	71°24′ W.
From point ''ZC'' along the seaward EEZ boundary to point ''A''.		

(e) *EEZ Nearshore Management Area 4.* EEZ Nearshore Management Area 4 is defined by the area, including state and Federal waters that are near-shore in the northern Mid-Atlantic, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
M	40°27.5′N.	72°14′ W.
N	40°45.5′ N.	71°34′ W.
O	41°07′ N.	71°43′ W.
P	41°06.5′ N.	71°47′ W.
S	40°58′ N.	72°00′ W.
T	41°00.5′ N.	72°00′ W.
From Point ''T'', along the New York/New Jersey coast to Point ''W''		
W	39°50′ N.	74°09′ W.
V	39°50′ N.	73°01′ W.
U	40°12.5′ N.	72°48.5′ W.
From Point ''U'' back to Point ''M''.		

(f) *EEZ Nearshore Management Area 5.* EEZ Nearshore Management Area 5 is defined by the area, including state and Federal waters that are near-shore in the southern Mid-Atlantic, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
W	39°50′ N.	74°09′ W.
V	39°50′ N.	73°01′ W.
X	38°39.5′ N.	73°40′ W.
Y	38°12′ N.	73°55′ W.
Z	37°12′ N.	74°44′ W.
ZA	35°34′ N.	74°51′ W.
ZB	35°14.5′ N.	75°31′ W.
From Point ''ZB'' along the coasts of North Carolina, Virginia, Maryland, Delaware, New Jersey back to Point ''W''.		

(g) *Nearshore Management Area 6.* The Nearshore Management Area 6 is defined by the area, including New York and Connecticut state waters, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
T	41°00.5′ N.	72°00′ W.
S	40°58′ N.	72°00′ W.
From Point ''S'', boundary follows the 3 mile limit of New York as it curves around Montauk Point to Point ''P''		
P	41°06.5′ N.	71°47′ W.
Q	41°11′30″ N.	71°47′15″ W.
R	41°18′30″ N.	71°5′30″W.
From point ''R'', along the maritime boundary between Connecticut and Rhode Island to the coast; then west along the coast of Connecticut to the western entrance of Long Island Sound; then east along the New York coast of Long Island Sound and back to Point ''T''.		

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
F	42°10′ N.	69°56′ W.
G	42°05.5′ N.	70°14′ W.
G1	42°04.25′ N.	70°17.22′ W.
G2	42°02.84′ N.	70°16.1′ W.
G3	42°03.35′ N.	70°14.2′ W.
From Point G3 along the outer Cape Cod coast to Point H		
H	41°40′ N.	70°00′ W.
I	41°15′ N.	70°00′ W.
J	41°21.5′ N.	69°16′ W.
From Point ''J'' back to Point ''F''.		

(i) NMFS may, consistent with § 697.25, implement management measures necessary for each management area, in order to end overfishing and rebuild stocks of American lobster.

§ 697.19 Trap limits and trap tag requirements for vessels fishing with traps.

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Beginning January 5, 2000, through April 30, 2000, vessels fishing in any EEZ management area except EEZ Offshore Management Area 3, shall not fish with, deploy in, possess in, or haul back from such area more than 1,000 traps.

(2) Beginning May 1, 2000, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying the EEZ Nearshore Management Area(s) and the Area 2/3 Overlap, or, only the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 traps.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Beginning January 5, 2000, through April 30, 2000, vessels fishing only EEZ Offshore Management Area 3, or, fishing only EEZ Offshore

Management Area 3 and the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 2,000 traps.

(2) Beginning May 1, 2000, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 1,800 traps.

(c) *Trap tag requirements for vessels fishing with traps.* Beginning May 1, 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member.

(d) In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

§ 697.20 Size, harvesting and landing requirements.

(a) *Condition.* By being issued a Federal limited access American lobster permit, the vessel owner is subject to all measures in this subpart, unless otherwise specified, regardless of where American lobsters were harvested.

(b) *Carapace length.* (1) The minimum carapace length for all American lobsters harvested in or from the EEZ is 3¼ inches (8.26 cm).

(2) The minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit, is 3¼ inches (8.26 cm).

(3) The maximum carapace length for all American lobster harvested in or from EEZ Nearshore Management Area 1, as defined in § 697.18(a)(1), is 5 inches (12.7 cm). Any vessel fishing in or permitted to fish in EEZ Nearshore Management Area 1 must comply with the 5 inch (12.7 cm) maximum carapace length requirement regardless of where the lobsters are harvested.

(4) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in paragraph (b) in this section.

(c) *Mutilation.* (1) Subject to the rebuttable presumption in § 697.7(c)(3), no person may remove meat or any body appendage from any American lobster harvested in or from the EEZ before, or at the time of landing, or have in possession any American lobster part other than whole lobsters, up to the time when a dealer first receives or possesses American lobster.

(2) Subject to the rebuttable presumption in § 697.7(c)(3), no owner, operator or person aboard a vessel issued a Federal American lobster permit may remove meat or any body appendage from any American lobster before or at the time of landing, or have in possession any American lobster part other than whole lobsters, up to the time when a dealer first receives or possesses American lobster.

(d) *Berried females.* (1) Any berried female harvested in or from the EEZ must be returned to the sea immediately.

(2) Any berried female harvested or possessed by a vessel issued a Federal limited access American lobster permit must be returned to the sea immediately.

(3) No vessel, or owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may possess any berried female.

(4) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female as specified in paragraph (d) of this section.

(e) *Removal of eggs.* (1) No person may remove, including, but not limited to, the forcible removal and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female American lobster.

(2) No owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may remove, including but not limited to, the forcible removal, and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female American lobster.

(3) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that bears evidence of the removal of extruded eggs from its abdominal appendages as specified in paragraph (e) of this section.

(f) *Spearing.* (1) No person may spear any American lobster in the EEZ.

(2) No person on a vessel issued a Federal lobster license may spear a lobster.

(3) No person may harvest or possess any American lobster which has been speared in the EEZ.

(4) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any American lobster which has been speared.

§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.

(a) *Gear identification and marking.* All lobster gear deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit, and not permanently attached to the vessel must be legibly and indelibly marked with the following:

(1) *Identification.* Effective through April 30, 2000, all lobster gear must be marked with the following code of identification:

(i) A number assigned by the Regional Administrator; or

(ii) Whatever positive identification marking is required by the vessel's home-port state.

(2) *Identification and trap tagging.* Beginning May 1, 2000, lobster gear must be marked with a trap tag (as specified in § 697.19) with the following code of identification:

(i) A number assigned by the Regional Administrator; or

(ii) Whatever positive identification marking is required by the vessel's home-port state.

(b) *Deployment and gear configuration.* In the areas of the EEZ described in paragraph (b)(4) of this section, lobster trap trawls are to be displayed and configured as follows:

(1) Lobster trap trawls of three or fewer traps deployed in the EEZ must be attached to and marked with a single buoy.

(2) Lobster trap trawls consisting of more than three traps must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west, to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east, to and including south) of an American lobster trap trawl must be configured with a radar reflector only. Standard tetrahedral corner radar reflectors of at least 8 inches (20.32 cm) (both in height and width, and made from metal) must be employed. (A copy of a diagram showing a standard tetrahedral corner radar reflector is available upon request to the Office of the Regional Administrator.)

(3) No American lobster trap trawl shall exceed 1.5 nautical miles (2.78 km) in length, as measured from radar reflector to radar reflector.

(4) Gear deployment and configuration requirements specified in paragraphs (b)(1) through (b)(3) of this section apply in the following areas:

(i) *Gulf of Maine gear area.* Gulf of Maine gear area is defined as all waters of the EEZ north of 42°20′ N. lat. seaward of a line drawn 12 nautical miles (22.2 km) from the baseline of the territorial sea;

(ii) *Georges Bank gear area.* Georges Bank gear area is defined as all waters of the EEZ south of 42°20′ N. lat. and east of 70°00′ W. long. or the outer boundary of the territorial sea, whichever lies farther east;

(iii) *Southern New England gear area.* Southern New England gear area is defined as all waters of the EEZ west of 70°00′ W. long., east of 71°30′ W. long. at a depth greater than 25 fathoms (45.72 m); and

(iv) *Mid-Atlantic gear area.* Mid-Atlantic gear area is defined as all waters of the EEZ, west of 71°30′ W. long. and north of 36°33′ N. lat. at a depth greater than 40 fathoms (73.15 m).

(c) *Escape vents.* (1) All American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, must

include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 1 15/16 inches (4.92 cm) by 5¾ inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2 7/16 inches (6.19 cm) in diameter.

(2) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this final rule, any other type of acceptable escape vent that the Regional Administrator finds to be consistent with paragraphs (c)(1)(i) and (ii) of this section.

(d) *Ghost panel.* (1) Lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel located in the outer parlor(s) of the trap and not in the bottom of the trap constructed of, or fastened to the trap with, one of the following untreated materials: Wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or nonstainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter and covering a rectangular opening not less than 3¾ inches (9.53 cm) by 3¾ inches (9.53 cm). The door of the trap may serve as the ghost panel, if fastened with one of these materials.

(2) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this rule, any other design, mechanism, material, or other parameter that serves to create an escape portal not less than 3¾ inches (9.53 cm) by 3¾ inches (9.53 cm).

(e) *Maximum trap size.* (1) *EEZ Nearshore Management Area maximum trap size.* (i) Beginning January 5, 2000, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under §697.4, if deployed or possessed by a person or vessel permitted to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape, Area 2, Area 4, Area 5, or Area 6) and the Area 2/3 Overlap, or only in the Area 2/3 Overlap shall not exceed 25,245 cubic inches (413,690 cubic centimeters) in volume, as measured on the outside portion of the trap, exclusive of the runners;

(ii) Beginning May 1, 2003, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under §697.4, if deployed or possessed by a person or vessel permitted to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape, Area 2, Area 4, Area 5, or Area 6) and the Area 2/3 Overlap, or only in the Area 2/3 Overlap, shall not exceed 22,950 cubic inches (376,081 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners.

(2) *EEZ Offshore Management Area maximum trap size.* (i) Beginning January 5, 2000, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under §697.4, if deployed or possessed by a person or vessel permitted to fish only in EEZ Offshore Management Area 3 or only in EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not exceed 33,110 cubic inches (542,573 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners;

(ii) Beginning May 1, 2003, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under §697.4, if deployed or possessed by a person or vessel permitted to fish only in EEZ Offshore Management Area 3 or only in EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not exceed 30,100 cubic inches (493,249 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners.

(f) *Enforcement action.* Unidentified, unmarked, unvented, improperly vented American lobster traps, or, beginning May 1, 2000, any untagged American lobster traps, or any lobster traps subject to the requirements and specifications of § 697.21, which fail to meet such requirements and specifications may be seized and disposed of in accordance with the provisions of part 219 of this title.

§ 697.22 Exempted fishing.

The Regional Administrator may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic striped bass, or Atlantic sturgeon, resource or fishery pursuant to the provisions of § 600.745 of this chapter.

(a) The Regional Administrator may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of any applicable stock rebuilding program, the provisions of the ACFCMA, the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the American lobster, Atlantic striped bass, weakfish, or Atlantic sturgeon resource or fishery; or

(2) Create significant enforcement problems.

(b) Each vessel participating in any exempted fishing activity is subject to all provisions of this part, except those explicitly 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 aboard the vessel seeking the benefit of such exemption. Exempted fishing activity shall be authorized pursuant to and consistent with § 600.745 of this chapter.

§ 697.23 Restricted gear areas.

(a) Resolution of lobster gear conflicts with fisheries managed under the Magnuson-Stevens Act shall be done under provisions of § 648.55 of this chapter.

(b) *Restricted Gear Area I*—(1) *Duration*—(i) *Mobile Gear.* From October 1 through June 15 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area I, as defined in paragraph (b)(2) of this section, unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear.* From June 16 through September 30 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area I as defined in paragraph (b)(2) of this section.

(2) *Definition of Restricted Gear Area I.* Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

Point to	Latitude	Longitude
120	40°06.4′ N.	68°35.8′ W.
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.
72	40°08.7′ N.	68°49.6′ 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.
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.

INSHORE BOUNDARY—Continued

Point to	Latitude	Longitude
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.
to 181	39°59.3′ N.	70°14.0′ W.

OFFSHORE BOUNDARY

Point to	Latitude	Longitude
69	40°07.9′ N.	68°36.0′ W.
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.
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°59.7′ N.	70°13.05′ W.

OFFSHORE BOUNDARY—Continued

Point to	Latitude	Longitude
181	39°59.3′ N.	70°14.0′ W. to
119	40°02.75′ N.	70°16.1′ W.

(c) *Restricted Gear Area II*—(1) *Duration*—(i) *Mobile Gear.* From November 27 through June 15 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area II (as defined in paragraph (c)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear.* From June 16 through November 26 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area II as defined in paragraph (c)(2) of this section.

(2) *Definition of Restricted Gear Area II.* Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

Point to	Latitude	Longitude
1	39°59.3′ N.	70°14.0′ W.
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	39°29.0′ N.	72°09.25′ W.

OFFSHORE BOUNDARY

Point to	Latitude	Longitude
49	40°02.75′ N.	70°16.1′ W.
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.

OFFSHORE BOUNDARY—Continued

Point to	Latitude	Longitude
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.
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	39°29.75′ N.	72°09.8′ W.

(d) *Restricted Gear Area III*—(1) *Duration*—(i) *Mobile Gear.* From June 16 through November 26 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area III (as defined in paragraph (d)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear.* From January 1 through April 30 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area III as defined in paragraph (d)(2) of this section.

(2) *Definition of Restricted Gear Area III.* Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

Point to	Latitude	Longitude
49	40°02.75′ N.	70°16.1′ W.
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.
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	39°29.75′ N.	72°09.8′ W.

OFFSHORE BOUNDARY

Point to	Latitude	Longitude
182	40°05.6′ N.	70°17.7′ W.
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°38.6′ 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	39°33.65′ N.	72°15.0′ W.

(e) *Restricted Gear Area IV*—(1) *Duration for Mobile Gear.* From June 16 through September 30 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area IV (as defined in paragraph (e)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(2) *Definition of Restricted Gear Area IV.* Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

Point	Latitude	Longitude
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.

INSHORE BOUNDARY—Continued

Point	Latitude	Longitude
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.
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.	70°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206	40°07.80′ N.	70°09.20′ W.
to 119	40°02.75′ N.	70°16.1′ W.

OFFSHORE BOUNDARY

Point to	Latitude	Longitude
193	40°13.60′ N.	68°40.60′ W.
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	40°07.80′ N.	70°09.20′ W.

§ 697.24 Exempted waters for Maine State American lobster permits.

A person or vessel holding a valid permit or license issued by the State of Maine that lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobsters in the following areas designated as EEZ, if such fishing is conducted in such waters in accordance with all other applicable Federal and State regulations:

(a) West of Monhegan Island in the area located north of the line 43.5 deg.42′08″ N. lat., 69.5 deg.34′18″ W. long., and 43.5 deg.42′15″ N. lat., 69.5 deg.19′18″ W. long.

(b) East of Monhegan Island in the area located west of the line 43.5 deg.44′00″ N. lat., 69.5 deg.15′05″ W. long., and 43.5 deg.48′10″ N. lat., 69.5 deg.08′01″ W. long.

(c) South of Vinalhaven in the area located west of the line 43.5 deg.521″ N. lat., 68.5 deg.39′54″ W. long., and 43.5 deg.48′10″ N. lat., 67.5 deg.40′33″ W. long.

(d) South of Boris Bubert Island in the area located north of the line 44.5 deg.19′15″ N. lat, 67.5 deg.49′30″ W. long. and 44.5 deg.23′45″ N. lat., 67.5 deg.40′33″ W. long.

§ 697.25 Adjustment to management measures.

(a) On or before February 15, 2001, and annually on or before February 15, thereafter, NMFS may, after consultation with the Commission, publish a proposed rule to implement additional or different management measures for Federal waters in any of the management areas specified in § 697.18 if it is determined such measures are necessary to achieve or be compatible with ISFMP objectives, or the ISFMP, to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. These management measures may include, but are not limited to, continued reductions of fishing effort or numbers of traps, increases in minimum or decreases in maximum size, increases in the escape vent size, decreases in the lobster trap size, closed areas, closed seasons, landing limits, trip limits and other management area-specific measures as may be identified and recommended by the Commission prior to December 1 of the previous year. After considering public comment, NMFS

may publish a final rule to implement any such measures.

(b) At any other time, NMFS may publish a proposed rule, after consultation with the Commission, to implement any additional or different management measures in order to achieve ISFMP objectives or be compatible with Commission measures or recommendations or to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. After considering public comments, NMFS may publish a final rule to implement any such measures.

(c) Notwithstanding other provisions of this part, NMFS may publish any additional or different management measures as described herein without prior public comment, pursuant to and consistent with 5 U.S.C. 553