50
Parts 200 to 599
Revised as of October 1, 2001

Wildlife and Fisheries

Containing a codification of documents of general applicability and future effect

As of October 1, 2001

With Ancillaries

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National Archives and Records Administration

A Special Edition of the Federal Register
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To cite the regulations in this volume use title, part and section number. Thus, 50 CFR 216.1 refers to title 50, part 216, section 1.
The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16 as of January 1
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- Title 42 through Title 50 as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.
Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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INCorporATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

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An index to the text of “Title 3—The President” is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.
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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

October 1, 2001.
Title 50—FISH AND WILDLIFE is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 1–199, parts 200–599 and part 600 to end. The first volume (parts 1–199) contains the current regulations issued under chapter I—United States Fish and Wildlife Service, Department of the Interior. The second volume (parts 200–599) contains the current regulations issued under chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; chapter III—International Fishing and Related Activities, chapter IV—Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee regulations; and chapter V—Marine Mammal Commission. The third volume (part 600 to end) contains the current regulations issued under chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2001.

Alphabetical listings of endangered and threatened wildlife and plants appear in part 17.

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CROSS REFERENCES: Commercial fishing on Red Lake Indian Reservation, Bureau of Indian Affairs, Interior: 25 CFR part 242.
Disposal of certain wild animals in national parks, National Park Service, Interior: 36 CFR part 10.
Exchanges of land for migratory bird or other wildlife refuges, Bureau of Land Management, Interior: 43 CFR 2200.0–2272.1.
Fishing, hunting, trapping, and protection of wildlife in national forests and wildlife refuges, Forest Service, USDA: 36 CFR part 241, §§ 261.8, 261.9.
Fishing, hunting, trapping, and protection of wildlife in national parks, memorials, recreation areas, etc., National Park Service, Interior: 36 CFR parts 2, 7, 20.
Fishing and hunting in reservoir areas, Corps of Engineers, Army, DoD: 36 CFR 327.8.
Making pictures, television production, or sound tracks on areas administered by the United States Fish and Wildlife Service or the National Park Service, Interior: 43 CFR 5.1.
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NOTE TO PART 216: See also 50 CFR parts 228 and 229 for regulations governing certain incidental takings of marine mammals.

AUTHORITY: 16 U.S.C. 1361 et seq., unless otherwise noted.
Subpart A—Introduction

§ 216.1 Purpose of regulations.


§ 216.2 Scope of regulations.

This part 216 applies solely to marine mammals and marine mammal products as defined in §216.3. For regulations under the MMPA, with respect to other marine mammals and marine mammal products, see 50 CFR part 18.


§ 216.3 Definitions.

In addition to definitions contained in the MMPA, and unless the context otherwise requires, in this part 216:


Active sportfishing means paying passengers have their terminal fishing gear (lures, hooks, etc.) in the water in an attempt to catch fish or, in the case of fishing involving chumming, fishing is considered to be in progress from the instant fish have been sighted taking bait (boiling) during that chumming process.

Administrator, Northeast Region means Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

Administrator, Southeast Region means Administrator, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

Administrator, Southwest Region means the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or his or her designee.

Agreement on the International Dolphin Conservation Program (Agreement on the IDCP) means the Agreement establishing the formal binding IDCP that was signed in Washington, DC on May 21, 1998.

Alaskan Native means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

Article of handicraft means items made by an Indian, Aleut or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which—

1. Were commonly produced by Alaskan Natives on or before October 14, 1983;

2. Are composed wholly or in some significant respect of natural materials, and;

3. Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production results. Traditional native handicrafts include, but are not
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limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

**Assistant Administrator** means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, or his/her designee.

**Authentic native articles of handicrafts and clothing** means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

**Bona fide scientific research:** (1) Means scientific research on marine mammals conducted by qualified personnel, the results of which:

(i) Likely would be accepted for publication in a refereed scientific journal;

(ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection); or

(iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and 101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

**Carrying capacity** means the Regional Director’s determination of the maximum amount of fish that a vessel can carry in short tons based on the greater of the amount indicated by the builder of the vessel, a marine surveyor’s report, or the highest amount reported landed from any one trip.

**Certified charter vessel** means a fishing vessel of a non-U.S. flag nation, which is operating under the jurisdiction of the marine mammal laws and regulations of another, harvesting, nation by a formal declaration entered into by mutual agreement of the nations.

**Co-investigator** means the on-site representative of a principal investigator.

**Commercial fishing operation** means the lawful harvesting of fish from the marine environment for profit as part of an ongoing business enterprise. Such terms may include licensed commercial passenger fishing vessel (as defined) activities, but no other sportfishing activities, whether or not the fish so caught are subsequently sold.

**Commercial passenger fishing vessel** means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

**Custody** means holding a live marine mammal pursuant to the conditional authority granted under the MMPA, and the responsibility therein for captive maintenance of the marine mammal.

**Declaration of Panama** means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

**Director, Office of Protected Resources** means Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**Dolphin Mortality Limit (DML)** means the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel, unless a shorter time period is specified.

**Endangered Species** means a species or subspecies of marine mammal listed as “endangered” pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93–205 (see part 17 of this title).

ETP means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America.

Facility means, in the context specific to captive marine mammals: (1) One or more permanent primary enclosures used to hold marine mammals captive (i.e., pools, lagoons) and associated infrastructure (i.e., equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or (2) A traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Feeding is offering, giving, or attempting to give food or non-food items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted or supported. It does not include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish byproducts from fish processing plants or other platforms if the discharge is otherwise legal and is incidental to operation of the activity.

First exporter means the person or company that first exports the fish or fish product, or, in the case of shipments that are subject to the labeling requirements of 50 CFR part 247 and that only contain fish harvested by vessels of the United States, the first seller of the fish or fish product.

Fisheries Certificate of Origin means NOAA Form 370, as described in §216.24(f)(5).

Force majeure means forces outside the vessel operator’s or vessel owner’s control that could not be avoided by the exercise of due care.


Fur seal means North Pacific fur seal, scientifically known as Callorhinus ursinus.

Hard part means any bone, tooth, baleen, treated pelt, or other part of a marine mammal that is relatively solid or durable.

Harvesting nation means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipments.

Humane means the method of taking, import, export, or other activity which involves the least possible degree of pain and suffering practicable to the animal involved.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban issued under 16 U.S.C. 1371(a)(2) on the importation of fish or fish products, the definition of “import” in §216.24(f)(1)(i) shall apply.

Incidental catch means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: Provided, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

Intentional purse seine set means that a tuna purse seine vessel or associated vessels chase marine mammals and subsequently make a purse seine set.

International Dolphin Conservation Program (IDCP) means the international program established by the
agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama and the Agreement on the IDCP.


*International Review Panel (IRP)* means the International Review Panel established by the Agreement on the IDCP.

**Intrusive research** means a procedure conducted for bona fide scientific research involving: A break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal’s immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (i.e., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (i.e., audio broadcasts directed at animals that may affect behavior). For captive animals, this definition does not include:

1. A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or
2. A procedure involving either the introduction of a substance or object (i.e., as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not involve a risk to the health or welfare of the captive animal.

*Label* means a display of written, printed, or graphic matter on or affixed to the immediate container of any article.

*Land or landing* means to begin offloading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

*Large-scale drift net* means a gillnet that is composed of a panel or panels of webbing, or a series of such gillnets, with a total length of 2.5 kilometers or more that is used on the high seas and allowed to drift with the currents and winds for the purpose of harvesting fish by entangling the fish in the webbing of the net.

*Level A Harassment* means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

*Level B Harassment* means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

*Marine environment* means the oceans and the seas, including estuarine and brackish waters.

*Marine mammal* means those specimens of the following orders, which are morphologically adapted to the marine environment, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia, other than walrus (seals and sea lions).


*Native village or town* means any community, association, tribe, band, clan or group.

*Optimum sustainable population* is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

*Per-stock per-year dolphin mortality limit* means the maximum allowable
number of incidental dolphin mortalities and serious injuries from a specified stock per calendar year, as established under the IDCP.

*Pregnant* means pregnant near term.

*Pribilovians* means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

*Principal investigator* means the individual primarily responsible for the taking, importation, export, and any related activities conducted under a permit issued for scientific research or enhancement purposes.

*Public display* means an activity that provides opportunities for the public to view living marine mammals at a facility holding marine mammals captive.

*Regional Director* means the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802, or his/her designee.

*Rehabilitation* means treatment of beached and stranded marine mammals taken under section 109(h)(1) of the MMPA or imported under section 109(h)(2) of the MMPA, with the intent of restoring the marine mammal's health and, if necessary, behavioral patterns.

*Secretary* shall mean the Secretary of Commerce or his authorized representative.

*Serious injury* means any injury that will likely result in mortality.

*Sexual harassment* means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

*Soft part* means any marine mammal part that is not a hard part. Soft parts do not include urine or fecal material.

*South Pacific Ocean* means any waters of the Pacific Ocean that lie south of the equator.

*Stranded or stranded marine mammal* means a marine mammal specimen under the jurisdiction of the Secretary:

(1) If the specimen is dead, and is on a beach or shore, or is in the water within the Exclusive Economic Zone of the United States; or

(2) If the specimen is alive, and is on a beach or shore and is unable to return to the water, or is in the water within the Exclusive Economic Zone of the United States where the water is so shallow that the specimen is unable to return to its natural habitat under its own power.

*Subsistence* means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

*Subsistence uses* means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handcraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this definition—

(1) *Family* means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(2) *Barter* means the exchange of fur seals or their parts, taken for subsistence uses—

(i) For other wildlife or fish or their parts, or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

*Take* means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.


*Trip* means a voyage starting when a vessel leaves port with all fish wells
§ 216.4 Other laws and regulations.

(a) Federal. Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) State laws or regulations. See part 403 of this chapter.

§ 216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.


§ 216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the MMPA, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the MMPA shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to § 216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the MMPA or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the MMPA, and...
such proceedings result in a finding that the person accused is not guilty of a criminal violation of the MMPA, the Secretary may institute proceedings for the assessment of a civil penalty under this part: Provided, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the MMPA shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: Provided, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.


§216.7 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the MMPA shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see §201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR part 900 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the MMPA.


§216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the MMPA and may take any actions authorized by the MMPA with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this MMPA. Pursuant to the terms of section 107(b) of the MMPA, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this MMPA.


Subpart B—Prohibitions

§216.11 Prohibited taking.

Except as otherwise provided in subparts C, D, and I of this part 216 or in part 228 or 229, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.


§216.12 Prohibited importation.

(a) Except as otherwise provided in subparts C and D of this part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to subparts C and D of this part 216, it
§216.13 Prohibited uses, possession, transportation, sales, and permits.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the MMPA or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this MMPA.

(d) Any person to violate any term, condition, or restriction of any permit issued by the Secretary.

§216.14 Marine mammals taken before the MMPA.

(a) Section 102(e) of the MMPA provides, in effect, that the MMPA shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant’s name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 13
§ 216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

§ 216.23 Prohibitions under the General Authorization for Level B harassment for scientific research.

It shall be unlawful for any person to:

(a) Provide false information in a letter of intent submitted pursuant to §216.45(b);
(b) Violate any term or condition imposed pursuant to §216.45(d).

§ 216.24 Actions permitted by international treaty, convention, or agreement.

The MMPA and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in subpart B of this part and the provisions of the MMPA shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151 through 1187, as in each case, from time to time amended.

Subpart C—General Exceptions

§ 216.25 Depleted species.

The following species or population stocks have been designated by the Assistant Administrator as depleted under the provisions of the MMPA.

(a) Hawaiian monk seal (Monachus schauinslandi).
(b) Bowhead whale (Balaena mysticetus).
(c) North Pacific fur seal (Callorhinus ursinus). Pribilof Island population.
(d) Bottlenose dolphin (Tursiops truncatus), coastal-migratory stock along the U.S. mid-Atlantic coast.
(e) Eastern spinner dolphin (Stenella longirostris orientalis).
(f) Northeastern offshore spotted dolphin (Stenella attenuata).
(g) Cook Inlet, Alaska, stock of beluga whales (Delphinapterus leucas). The stock includes all beluga whales occurring in waters of the Gulf of Alaska north of 58° North latitude including, but not limited to, Cook Inlet, Kamishak Bay, Chinitna Bay, Tuxedni Bay, Prince William Sound, Yakutat Bay, Shelioko Strait, and off Kodiak Island and freshwater tributaries to these waters.
§216.22  (1) Is accomplished in a humane manner;  
(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and  
(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;  
(2) The circumstances requiring the taking;  
(3) The method of taking;  
(4) The name and official position of the State official or employee involved;  
(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and  
(6) Such other information as the Secretary may require.

(c) Salvage of dead stranded marine mammals or parts therefrom and subsequent transfer.

(1) Salvage. In the performance of official duties, a state or local government employee; an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; or a person authorized under 16 U.S.C. 1382(c) may take and salvage a marine mammal specimen if it is stranded and dead or it was stranded or rescued and died during treatment, transport, captivity or other rehabilitation subsequent to that stranding or distress if salvage is for the purpose of utilization in scientific research or for the purpose of maintenance in a properly curated, professionally accredited scientific collection.

(2) Registration. A person salvaging a dead marine mammal specimen under this section must register the salvage of the specimen with the appropriate Regional Office of the National Marine Fisheries Service within 30 days after the taking or death occurs. The registration must include:

(i) The name, address, and any official position of the individual engaged in the taking and salvage;  
(ii) A description of the marine mammal specimen salvaged including the scientific and common names of the species;  
(iii) A description of the parts salvaged;  
(iv) The date and the location of the taking;  
(v) Such other information as deemed necessary by the Assistant Administrator.  

(3) Identification and curation. The Regional Director will assign a single unique number to each carcass, and the parts thereof, that are salvaged under the provisions of this section. The person who salvaged the specimen may designate the number to be assigned. After this number is assigned, the person who salvaged the specimen must permanently mark that number on each separate hard part of that specimen and must affix that number with tags or labels to each soft part of that specimen or the containers in which that soft part is kept. Each specimen salvaged under this section must be curated in accordance with professional standards.

(4) No sale or commercial trade. No person may sell or trade for commercial purposes any marine mammal specimen salvaged under this section.
(5) Transfer without prior authorization. A person who salvages a marine mammal specimen under this section may transfer that specimen to another person if:

(i) The person transferring the marine mammal specimen does not receive remuneration for the specimen;

(ii) The person receiving the marine mammal specimen is an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; is a person authorized under 16 U.S.C. 1382(c); or is a person who has received prior authorization under paragraph (c)(6) of this section;

(iii) The marine mammal specimen is transferred for the purpose of scientific research, for the purpose of maintenance in a properly curated, professionally accredited scientific collection, or for educational purposes;

(iv) The unique number assigned by the National Marine Fisheries Service is on, marked on, or affixed to the marine mammal specimen or container; and

(v) Except as provided under paragraph (c)(8) of this section, the person transferring the marine mammal specimen notifies the appropriate Regional Office of the National Marine Fisheries Service of the transfer, including notification of the number of the specimen transferred and the person to whom the specimen was transferred, within 30 days after the transfer occurs.

(6) Other transfers within the United States. Except as provided under paragraphs (c)(5) and (c)(8) of this section, a person who salvages a marine mammal specimen, or who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to another person unless:

(a) The person transferring the marine mammal specimen does not receive remuneration for the specimen;

(b) The person receiving the marine mammal specimen is an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; is a person authorized under 16 U.S.C. 1382(c); or is a person who has received prior authorization under paragraph (c)(6) of this section;

(c) The marine mammal specimen is transferred for the purpose of scientific research, for the purpose of maintenance in a properly curated, professionally accredited scientific collection, or for educational purposes;

(d) The unique number assigned by the National Marine Fisheries Service is on, marked on, or affixed to the marine mammal specimen or container; and

(e) Except as provided under paragraph (c)(8) of this section, the person transferring the marine mammal specimen notifies the appropriate Regional Office of the National Marine Fisheries Service of the transfer, including notification of the number of the specimen transferred and the person to whom the specimen was transferred, within 30 days after the transfer occurs.

(7) Transfers outside of the United States. A person who salvages a marine mammal specimen, or a person who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to a person outside of the United States unless the Assistant Administrator grants prior written authorization for the transfer. The Assistant Administrator may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(8) Exceptions to requirements for notification or prior authorization. A person may transfer a marine mammal specimen salvaged under this section without the notification required in paragraph (c)(5)(v) of this section or the prior authorization required in paragraph (c)(6) of this section if:

(a) The transfer is a temporary transfer to a laboratory or research facility within the United States so that analyses can be performed for the person salvaging the specimen; or

(b) The transfer is a loan of not more than 1 year to another professionally accredited scientific collection within the United States.

§ 216.23 Native exceptions.

(a) Taking. Notwithstanding the prohibitions of subpart B of this part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) Restrictions. (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:
§ 216.23

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant’s procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the MMPA, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the MMPA upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

(e) Marking and reporting of Cook Inlet Beluga Whales. (1) Definitions. In addition to definitions contained in the MMPA and the regulations in this part:

(i) Reporting means the collection and delivery of biological data, harvest data, and other information regarding the effect of taking a beluga whale (Delphinapterus leucas) from Cook Inlet, as required by NMFS.
§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a United States purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in § 216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a United States purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less to intentionally deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a United States purse seine fishing vessel of greater than 400 short tons (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna if any part of the vessel’s fishing trip is in the ETP.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(ii) of this section.

(iv) It is unlawful for a person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP when the DML assigned to that vessel has been reached, or when there is not a DML assigned to that vessel.

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(i) and...
(a) (2)(ii) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report by radio to the Administrator, Southwest Region, the vessel’s date of exit from or subsequent entry into the permit area.

(b) Permits—(1) Vessel permit. The owner or managing owner of a United States purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that participates in commercial fishing operations in the ETP must possess a valid vessel permit issued under this paragraph (b) of this section. This permit is not transferable and must be renewed annually. If a vessel permit holder surrenders his/her permit to the Administrator, Southwest Region, the permit will not be returned and a new permit will not be issued before the end of the calendar year. Vessel permits are valid through December 31 of each year.

(2) Operator permit. The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a United States purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under paragraph (c)(4) of this section. The operator’s permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

(3) Possession and display. A valid vessel permit issued pursuant to paragraph (b)(1) of this section must be on board the vessel while engaged in fishing operations, and a valid operator permit issued pursuant to paragraph (b)(2) of this section must be in the possession of the operator to whom it was issued. Permits must be shown upon request to NMFS enforcement agents, or to U.S. Coast Guard officers, or to designated agents of NMFS or the IATTC (including observers). A vessel owner or operator who is at sea on a fishing trip when his or her permit expires and to whom a permit for the next year has been issued may take marine mammals under the terms of the new permit without having to display it on board the vessel until the vessel returns to port.

(4) Application for vessel permit. The owner or managing owner of a purse seine vessel may apply for a vessel permit from the Administrator, Southwest Region, allowing at least 45 days for processing. The application must be signed by the applicant and contain:

(i) The name, official number, tonnage, carrying capacity in short or metric tons, maximum speed in knots, processing equipment, and type and quantity of gear, including an inventory of equipment required under paragraph (c)(2) of this section if the application is for purse seineing involving the intentional taking of marine mammals, of the vessel that is to be covered under the permit;

(ii) A statement of whether the vessel will make sets involving the intentional taking of marine mammals;

(iii) The type and identification number(s) of Federal, State, and local commercial fishing licenses under which vessel operations are conducted, and the dates of expiration;

(iv) The name(s) of the operator(s) anticipated to be used; and

(v) The name of the applicant, whether he/she is the owner or the managing owner, his/her address, telephone and fax numbers, and, if applicable, the name, address, telephone and fax numbers of the agent or organization acting on behalf of the vessel.

(5) Application for operator permit. A person wishing to operate a purse seine vessel may apply for an operator permit from the Administrator, Southwest Region, allowing at least 45 days for processing. The application must be signed by the applicant or the applicant’s representative, if applicable, and contain:

(i) The name, address, telephone and fax numbers of the applicant;

(ii) The type and identification number(s) of any Federal, state, and local fishing licenses held by the applicant;
(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator; and

(iv) The date, location, and provider of any training for the operator permit.

(6) Fees. (i) Vessel permit application fees. An application for a permit under paragraph (b)(1) of this section must include a fee for each vessel as specified on the application form. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(ii) Operator permit fee. There is no fee for an operator permit under paragraph (b)(2) of this section. The Assistant Administrator may impose a fee or change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) Observer placement fee. The vessel permit holder must submit the fee for the placement of observers, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, by September 1 of the year prior to the year in which the vessel will be operated in the ETP. The Administrator, Southwest Region, will forward all observer placement fees to the IATTC or to the applicable international organization approved by the Administrator, Southwest Region.

(7) Application approval. The Administrator, Southwest Region, will determine the adequacy and completeness of an application and, upon determining that an application is adequate and complete, will approve that application and issue the appropriate permit, except for applicants having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a legal proceeding.

(b) Conditions applicable to all permits— (i) General Conditions. Failure to comply with the provisions of a permit or with these regulations may lead to suspension, revocation, modification, or denial of a permit. The permit holder, vessel owner, operator, or master may be subject, jointly or severally, to the penalties provided for under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(ii) Observer placement. By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement. No observer will be assigned to a vessel unless that vessel owner has submitted payment of observer fees to the Administrator, Southwest Region. The observers may be placed under an observer program of NMFS, IATTC, or another international observer program approved by the IDCP and the Administrator, Southwest Region.

(iii) Explosives. The use of explosive devices is prohibited during all tuna purse seine operations that involve marine mammals.

(iv) Reporting requirements. (A) The vessel permit holder of each permitted vessel must notify the Administrator, Southwest Region or the IATTC contact designated by the Administrator, Southwest Region, at least 5 days in advance of the vessel’s departure on a fishing voyage to allow for observer placement on every voyage.

(B) The vessel permit holder must notify the Administrator, Southwest Region, or the IATTC contact designated by the Administrator, Southwest Region, of any change of vessel operator at least 48 hours prior to departing on a trip. In the case of a change in operator due to an emergency, notification must be made within 72 hours of the change.

(v) Data release. By using a permit, the permit holder authorizes the release to NMFS and the IATTC of all data collected by observers aboard purse seine vessels during fishing trips under the IATTC observer program or another international observer program approved by the Administrator, Southwest Region. The permit holder must furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS and the IATTC. Data obtained under such releases will be used for the same purposes as would data collected directly by observers placed by NMFS and will
be subject to the same standards of confidentiality.  

(9) Mortality and serious injury reports. The Administrator, Southwest Region, will provide to the public periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels of individual species and stocks.

(c) Purse seining by vessels with DMLs. In addition to the terms and conditions set forth in paragraph (b) of this section, any permit for a vessel to which a DML has been assigned under paragraph (c)(8) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

1. A vessel may be used to chase and encircle schools of dolphins in the ETP only under the immediate direction of the holder of a valid operator’s permit.

2. No retention of Marine Mammals. Except as otherwise authorized by a specific permit, marine mammals incidentally taken must be immediately returned to the ocean without further injury. The operator of a purse seine vessel must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals must not be brailed, sacked up, or hoisted onto the deck during orca retrieval.

3. Gear and equipment required for valid permit. A vessel possessing a vessel permit for purse seining involving the intentional taking of marine mammals may not engage in fishing operations involving the intentional deployment of the net on or encirclement of dolphins unless it is equipped with a dolphin safety panel in its purse seine, has the other required gear and equipment, and uses the required procedures.

(i) Dolphin safety panel. The dolphin safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The dolphin safety panel must consist of small mesh webbing not to exceed 1 1/4 inches (3.18 centimeter (cm)) stretch mesh extending downward from the corkline and, if present, the base of the dolphin apron to a minimum depth equivalent to two strips of 100 meshes of 4 1/4 inches (10.80 cm) stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(ii) Dolphin safety panel markers. Each end of the dolphin safety panel and dolphin apron must be identified with an easily distinguishable marker.

(iii) Dolphin safety panel hand holds. Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, hand hold openings must be secured so that they will not allow the insertion of a 1 3/8 inch (3.50 cm) diameter cylindrical-shaped object.

(iv) Dolphin safety panel corkline hangings. Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, corkline hangings must be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1 3/8 inch (3.50 cm) diameter can be inserted between the cork and corkline hangings, must be tightened so as not to allow the insertion of a cylindrical object with a 1 3/8 inch (3.50 cm) diameter.

(v) Speedboats. A minimum of three speedboats in operating condition must be carried. All speedboats carried aboard purse seine vessels and in operating condition must be rigged with tow lines and towing bridles or towing posts. Speedboat hoisting bridles may not be substituted for towing bridles.

(vi) Raft. A raft suitable to be used as a dolphin observation-and-rescue platform must be carried.

(vii) Face mask and snorkel, or view box. At least two face masks and snorkels or view boxes must be carried.

(viii) Lights. The vessel must be equipped with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure
sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) Vessel inspection—(i) Annual. At least once during each calendar year, purse seine nets and other gear and equipment required under §216.24(c)(2) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit.

(ii) Reinspection. Purse seine nets and other gear and equipment required by these regulations must be made available for reinspection by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region. The vessel permit holder must notify the Administrator, Southwest Region, of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set/net alignment is required.

(iii) Upon failure to pass an inspection or reinspection, a vessel may not engage in purse seining involving the intentional taking of marine mammals until the deficiencies in gear or equipment are correct as required by NMFS.

(5) Operator permit holder training requirements. An operator must maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session an attendee will be instructed on the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for, or will contribute to, reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing conditions.
rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that in the view of the International Review Panel, prosecution by the United States is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

(iv) Dolphin safety panel. During backdown, the dolphin safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point.

(7) Experimental fishing operations. The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations. The Administrator, Southwest Region, may waive, as appropriate, any requirements of this section except DMLs and the obligation to carry an observer.

(i) A vessel permit holder may apply to the Administrator, Southwest Region, for an experimental fishing operation waiver allowing for processing no less than 90 days before the date the proposed operation is intended to begin. An application must be signed by the permitted operator and contain:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;
(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;
(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;
(D) A description of the applicability of this modification to other purse seine vessels;
(E) The planned design, time, duration, and general area of the experimental operation;
(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment; and
(G) A statement of the qualifications of the individual or company doing the analysis of the research.

(ii) The Administrator, Southwest Region, will acknowledge receipt of the application and, upon determining that it is complete, will publish a notice in the Federal Register summarizing the application, making the full application available for inspection and inviting comments for a minimum period of 30 days from the date of publication.

(iii) The Administrator, Southwest Region, after considering the information in the application and the comments received on it, will either issue a waiver to conduct the experiment which includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

(iv) A waiver for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer designated by the Administrator, Southwest Region, when all the terms and conditions of the permit are met.

(v) The Administrator, Southwest Region, may suspend or revoke an experimental fishing waiver in accordance with 15 CFR part 904 if the terms and conditions of the waiver or the provisions of the regulations are not followed.

(8) Operator permit holder performance requirements. [Reserved]
greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following year under the provisions of Annex IV of the Agreement on the IDCP.

(ii) Each vessel permit holder that desires a DML only for the period between July 1 to December 31 must provide the Administrator, Southwest Region, by September 1 of the prior year, the name of the United States purse seine fishing vessel(s) of greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required under the IDCP, for possible assignment of a DML for the 6-month period July 1 to December 31. Under the IDCP, the DML will be calculated by the IDCP from any unutilized pool of DMLs in accordance with the procedure described in Annex IV of the Agreement on the IDCP and will not exceed one-third of an unadjusted full-year DML as calculated by the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.

(B) The Administrator, Southwest Region, may adjust the DMLs in accordance with Annex IV of the Agreement on the IDCP. All adjustments of full-year DMLs will be made before January 1, and the Administrator, Southwest Region, will notify the Director of the IATTC of any adjustments prior to a vessel departing on a trip using its adjusted DML. The notification will be no later than February 1 in the case of adjustments to full-year DMLs, and no later than May 1 in the case of adjustments to DMLs for the second half of the year.

(C) Within the requirements of Annex IV of the Agreement on the IDCP, the Administrator, Southwest Region, may adjust a vessel’s DML, if it will further scientific or technological advancement in the protection of marine mammals in the fishery or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits will be considered a basis for adjustments.

(iv)(A) A vessel assigned a full-year DML that does not make a set on dolphins by April 1 or that leaves the fishery will lose its DML for the remainder of the year, unless the failure to set on dolphins is due to force majeure or other extraordinary circumstances as determined by the International Review Panel.

(B) A vessel assigned a DML for the second half of the year will be considered to have lost its DML if the vessel has not made a set on dolphins before December 31, unless the failure to set on dolphins is due to force majeure or extraordinary circumstances as determined by the International Review Panel.

(C) Any vessel that loses its DML for 2 consecutive years will not be eligible to receive a DML for the following year.

(D) NMFS will determine, based on available information, whether a vessel has left the fishery.

(1) A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates will no longer be conducting purse seine operations in the ETP for the remainder of the period covered by the DML will be determined to have left the fishery.

(2) NMFS will make all reasonable efforts to determine the intentions of the vessel owner, and the owner of any vessel that has been preliminarily determined to have left the fishery prior to NMFS making a final determination.
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under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(8)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel.

(vi) A vessel that is covered by a valid vessel permit and that does not normally fish for tuna in the ETP but desires to participate in the fishery on a limited basis may apply for a per-trip DML from the Administrator, Southwest Region, at any time, allowing at least 60 days for processing. The request must state the expected number of trips involving sets on dolphins and the anticipated dates of the trip or trips. The request will be forwarded to the Director of the IATTC for processing in accordance with Annex IV of the Agreement on the IDCP. A per-trip DML will be assigned if one is made available in accordance with the terms of Annex IV of the IDCP. If a vessel assigned a per-trip DML does not set on dolphins during that trip, the vessel will be considered to have lost its DML unless this was a result of force majeure or other extraordinary circumstances as determined by the International Review Panel. After two consecutive losses of a DML, a vessel will not be eligible to receive a DML for the next fishing year.

(vii) Observers will make their records available to the vessel operator at any reasonable time, including after each set, in order for the operator to monitor the balance of the DML(s) remaining for use.

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle dolphins intentionally:

(A) When the vessel’s DML, as adjusted, is reached or exceeded; or

(B) After the date and time provided in actual notification by letter, facsimile, radio, or electronic mail, or notice in the Federal Register by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future.

(x) Vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins intentionally:

(A) When the vessel’s DML, as adjusted, is reached or exceeded; or

(B) After the date and time provided in actual notification by letter, facsimile, radio, or electronic mail, or notice in the Federal Register by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future.

(xi) Sanctions recommended by the International Review Panel for any violation of these rules will be considered by NMFS and NOAA in enforcement actions brought under these regulations.

(xii) Intentionally deploying a purse seine net on, or to encircle, dolphins after a vessel’s DML, as adjusted, has been reached will disqualify the vessel from consideration for a DML for the following year. If already assigned, the DML for the following year will be withdrawn, and the Director of the IATTC will be notified by NMFS that the DML assigned to that vessel will be unutilized. Procedures found at 15 CFR part 904 apply to the withdrawal of the permit.

(d) Purse seining by vessels without assigned DMLs. In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator’s permit when used on such a vessel are subject to the following terms and conditions: a permit holder...
may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations must be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, and aborting the set at the earliest effective opportunity; the use of one or more rafts and face masks or view boxes to aid in the rescue of dolphins is recommended.

(e) Observers: (1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations.

(2) Research and observation duties will be carried out in such a manner as to minimize interference with commercial fishing operations. Observers must be provided access to vessel personnel and to dolphin safety gear and equipment, electronic navigation equipment, radar displays, high powered binoculars, and electronic communication equipment. The navigator must provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. Observers must be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties. No vessel owner, master, operator, or crew member of a permitted vessel may impair, or in any way interfere with, the research or observations being carried out. Masters must allow observers to use vessel communication equipment to report information concerning the take of marine mammals and other observer collected data upon request of the observer.

(3) Any marine mammals killed during fishing operations that are accessible to crewmen and requested from the permit holder or master by the observer must be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals or marine mammal parts designated as biological specimens by the observer must be retained in cold storage aboard the vessel until retrieved by authorized personnel of NMFS or the IATTC when the vessel returns to port for unloading.

(4) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, or to influence or attempt to influence an observer, or to harass (including sexual harassment) an observer by conduct which has the purpose or effect of unreasonably interfering with the observer’s work performance, or which 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.

(i) All observers must be provided sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(ii) 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 common facilities must be established before the placement meeting and approved by NMFS or other approved observer program and must be followed during the entire trip.
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(iii) In the event there are one or more female crew members, the female observer must be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(f) Importation, purchase, shipment, sale and transport. (1)(i) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen, or as specified at paragraphs (f)(7) through (f)(9) of this section.

(ii) HTS numbers requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo. The following HTS numbers identify yellowfin tuna or yellowfin tuna products that are harvested in the ETP purse seine fishery and imported into the United States. All shipments containing tuna or tuna products imported into the United States under these HTS numbers must be accompanied by a Fisheries Certificate of Origin (FCO), NOAA Form 370. Yellowfin tuna identified by any of the following HTS numbers that was harvested using a purse seine in the ETP may not be imported into the United States unless both the nation with jurisdiction over the harvesting vessel and the exporting nation (if different) have an affirmative finding under paragraph (f)(9) of this section.

(A) Frozen:

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0303.41.0020</td>
<td>Albacore or longfjinned tunas, frozen.</td>
</tr>
<tr>
<td>0303.43.0000</td>
<td>Skipjack, frozen.</td>
</tr>
<tr>
<td>0303.49.0020</td>
<td>Bluefin, frozen.</td>
</tr>
<tr>
<td>0303.49.0040</td>
<td>Other tuna, frozen.</td>
</tr>
</tbody>
</table>

(B) Canned:

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1604.14.2020</td>
<td>Albacore tuna, in airtight containers, not in oil, not over 7kg, in quota.</td>
</tr>
<tr>
<td>1604.14.3020</td>
<td>Albacore tuna, in airtight containers, not in oil, not in quota.</td>
</tr>
</tbody>
</table>

(ii) HTS numbers requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo. The following HTS numbers identify tuna or tuna products, other than fresh tuna or tuna identified in paragraph (f)(2)(i) of this section, known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by a FCO. The shipment may not be imported into the United States unless accompanied by the official statement described in paragraph (f)(5)(x) of this section.

(A) Frozen:

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<td>Albacore tuna, in airtight containers, not in oil, not in quota.</td>
</tr>
</tbody>
</table>

(ii) Exports from driftnet nations only: HTS numbers requiring a Fisheries Certificate of Origin and official certification. The following HTS numbers identify categories of fish and shellfish, other than those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation and imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section must be accompanied by an FCO and the official...
statement described in paragraph (f)(5)(x) of this section.

(A) Frozen:
0303.10.0012 Salmon, chinook, frozen.
0303.10.0022 Salmon, chum, frozen.
0303.10.0032 Salmon, pink, frozen.
0303.10.0042 Salmon, sockeye, frozen.
0303.10.0052 Salmon, coho, frozen.
0303.10.0062 Salmon, Pacific, non-specific, frozen.
0303.21.0000 Trout, frozen.
0303.22.0000 Salmon, Atlantic and Danube, frozen.
0303.29.0000 Salmonidae, other, frozen.
0303.70.4097 Fish, other, frozen.
0303.75.0010 Dogfish, frozen.
0303.75.0090 Other sharks, frozen.
0303.79.2041 Swordfish steaks, frozen.
0303.79.2049 Swordfish, other, frozen.
0304.20.2066 Fish, fillet, skinned, in blocks frozen over 4.5kg.
0304.20.6008 Salmonidae, salmon fillet, frozen.
0304.20.6096 Fish, fillet, frozen.
0307.49.0010 Squid, other, fillet, frozen.
0307.49.2049 Swordfish, other, frozen.
0307.49.2049 Swordfish, other, frozen.
0304.10.4099 Other fish, fillets and other fish meat, fresh or chilled.
0304.20.2066 Other fish, fillets, skinned, in blocks weighing over 4.5kg, frozen.
0304.20.6096 Other fish, fillets, frozen.
0304.90.1089 Other fish, fillets and fish meat, in bulk or in immediate containers, fresh or chilled.
0304.90.9092 Other fish meat, fresh or chilled.
0305.30.6080 Fish, non-specific, fillet, dried/salted/brine.
0305.49.4040 Fish, non-specific, smoked.
0305.59.2000 Shark fins.
0305.59.4000 Fish, non-specific, dried.
0305.69.4000 Salmon, non-specific, salted.
0305.69.5000 Fish, non-specific, in immediate containers, salted, not over 6.8kg.
0305.69.6000 Fish, non-specific, in immediate containers, salted, not over 6.8kg.
0307.49.0050 Squid, non-specific, frozen/dried/salted/brine.
0307.49.0060 Squid, non-specific, & cuttle fish frozen/dried/salted/brine.

(B) Canned:
1604.11.2020 Salmon, pink, canned in oil, in airtight containers.
1604.11.2030 Salmon, other, canned in oil, in airtight containers.
1604.11.4010 Salmon, chum, canned, not in oil.
1604.11.4020 Salmon, pink, canned, not in oil.
1604.11.4030 Salmon, sockeye, canned, not in oil.
1604.11.4040 Salmon, other, canned, not in oil.
1604.11.4050 Salmon, other, canned, not in oil.
1604.19.2000 Fish, other, in airtight containers, not in oil.
1604.19.3000 Fish, other, in airtight containers, in oil.
1605.90.6055 Squid, loligo, prepared/preserved.
(C) Other:
0303.40.4099 Other fish, fillets and other fish meat, fresh or chilled.
0304.20.2066 Other fish, fillets, skinned, in blocks weighing over 4.5kg, frozen.
0304.20.6096 Other fish, fillets, frozen.
0304.90.1089 Other fish, fillets and fish meat, in bulk or in immediate containers, fresh or chilled.
0304.90.9092 Other fish meat, fresh or chilled.
0305.30.6080 Fish, non-specific, fillet, dried/salted/brine.
0305.49.4040 Fish, non-specific, smoked.
0305.59.2000 Shark fins.
0305.59.4000 Fish, non-specific, dried.
0305.69.4000 Salmon, non-specific, salted.
0305.69.5000 Fish, non-specific, in immediate containers, salted, not over 6.8kg.
0305.69.6000 Fish, non-specific, in immediate containers, salted, not over 6.8kg.
0307.49.0050 Squid, non-specific, frozen/dried/salted/brine.
0307.49.0060 Squid, non-specific, & cuttle fish frozen/dried/salted/brine.

(3) Imports requiring a Fisheries Certificate of Origin. Shipments containing the following may not be imported into the United States unless a completed FCO is filed with the Customs Service at the time of importation:

(i) Tuna classified under an HTS number listed in paragraphs (f)(2)(i) or (f)(2)(ii) of this section, or

(ii) Fish classified under an HTS number listed in paragraph (f)(2) of this section that was harvested by a vessel of a large-scale driftnet nation, as identified under paragraph (f)(8) of this section.

(4) Disposition of Fisheries Certificates of Origin. The FCO form described in paragraph (f)(5) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at http://swr.ucsd.edu/noaa370.htm. The FCO required under paragraph (f)(3) of this section must accompany the tuna or tuna products from entry into the United States, through final processing, and it must be endorsed at each change in ownership. FCOS that require multiple endorsements must be submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed. An invoice must accompany the shipment at the time of importation or, in the alternative, must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region, to produce the invoice.

(5) Contents of Fisheries Certificate of Origin. An FCO, certified to be accurate by the first exporter of the accompanying shipment, must include the following information:

(i) Customs entry identification;

(ii) Date of entry;

(iii) Exporter’s full name and complete address;

(iv) Importer’s or consignee’s full name and complete address;

(v) Species description, product form, and HTS number;

(vi) Total net weight of the shipment in kilograms;

(vii) Ocean area where the fish were harvested (ETP, Western Pacific Ocean, South Pacific Ocean, Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);

(viii) Type of fishing gear used to harvest the fish (purse seine, longline, bottom-fish, large-scale driftnet, gillnet, trawl, pole and line, or other);
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(x) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;

(x) Dates on which the fishing trip began and ended;

(xi) If the shipment includes tuna or products harvested with a purse seine net, the name of the harvesting vessel;

(xii) Dolphin safe condition of the shipment;

(xiv) For shipments harvested by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(8) of this section, a statement must be included on the Fisheries Certificate of Origin that is dated and signed by a responsible government official of the harvesting nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xii) If the shipment contains tuna harvested in the ETP by a purse seine vessel of more than 400 st (362.8 mt) carrying capacity, each importer or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describe the shipment of fish that they accompany.

(6) Dolphin-safe label. Tuna or tuna products sold in or exported from the United States that include on the label the term “dolphin-safe” or any other term or symbol that claims or suggests the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of subpart H of this part.

(7) Scope of embargoes—(i) ETP yellowfin tuna embargo. Yellowfin tuna or yellowfin tuna products harvested using a purse seine in the ETP identified by an HTS number listed in paragraph (f)(2)(i) of this section may not be imported into the United States if such tuna or tuna products were:

(A) Harvested on or after March 3, 1999, the effective date of section 4 of the IDCPA, and harvested by, or exported from, a nation that the Assistant Administrator has made an affirmative finding required for importation for that nation under paragraph (f)(9) of this section;

(B) Exported from an intermediary nation, as defined in section 3 of the MMPA, and a ban is currently in force prohibiting the importation from that nation under paragraph (f)(9)(viii) of this section; or

(C) Harvested before March 3, 1999, the effective date of section 4 of the IDCPA, and would have been banned from importation under section 101(a)(2) of the MMPA at the time of harvest.

(ii) Driftnet embargo. A shipment containing an item listed in paragraph (f)(2) of this section may not be imported into the United States if it:

(A) Was exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless the FCO is accompanied by an original statement by a responsible government official of the harvesting nation, signed by that official, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; or

(B) Is identified on the FCO as having been harvested by a large-scale driftnet.

(8) Large-scale driftnet nation: determination. Based upon the best information available, the Assistant Administrator will determine which nations have registered vessels that engage in fishing using large-scale driftnets. Such determinations will be published in the Federal Register. A responsible government official of any such nation may certify to the Assistant Administrator that none of the nation's vessels use large-scale driftnets. Upon receipt of the certification, the Assistant Administrator may find, and publish such finding in the Federal Register, that none of that nation's vessels engage in fishing with large-scale driftnets.

(9) Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP. (i) The Assistant Administrator will determine, on an
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annual basis, whether to make an affirmative finding based upon documentary evidence provided by the government of the exporting nation, by the government of the harvesting nation, if different, or by the IDCP and the IATTC, and will publish the finding in the FEDERAL REGISTER. A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator determines that the requirements of this paragraph are no longer being met. Every 5 years, the government of the harvesting nation, must submit such documentary evidence directly to the Assistant Administrator and request an affirmative finding. Documentary evidence needs to be submitted by the harvesting nation for the first affirmative finding subsequent to the effective date of this rule. The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations. An affirmative finding applies to tuna and tuna products that were harvested by vessels of the nation after February 15, 1999. To make an affirmative finding, the Assistant Administrator must find that:

(A) The harvesting nation participates in the IDCP and is either a member of the IATTC or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3, of the Convention establishing the IATTC, to become a member of that organization;

(B) The nation is meeting its obligations under the IDCP and its obligations of membership in the IATTC, including all financial obligations;

(C)(1) The annual total dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation’s purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate mortality of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year; and

(D)(1) For calendar year 2000 and any subsequent years in which the parties agree to a global allocation system for per-stock per-year individual stock quotas, the nation responded to the notification from the IATTC that an individual stock quota had been reached by prohibiting any additional sets on the stock for which the quota had been reached;

(2) If a per-stock per-year quota is allocated to each nation, the annual per-stock per-year dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation’s purse seine vessels (if any) for the year preceding the year in which the finding would start; or

(3)(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the total dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation’s purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate per-stock mortality limits of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with the stocks whose limits had been exceeded, for the remainder of the calendar year.

(ii) Documentary Evidence and Compliance with the IDCP.—(A) Documentary Evidence. The Assistant Administrator will make an affirmative finding under paragraph (f)(9)(i) of this section only
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If the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the harvesting nation is meeting the obligations of the IDCP, and whether ETP-harvested tuna imported from such nation comports with the tracking and verification regulations of subpart H of this part.

(B) Revocation. After considering the information provided under paragraph (f)(9)(ii)(A) of this section, each party’s financial obligations to the IATTC, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP, the Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iii) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required in paragraphs (f)(9)(i) and (f)(9)(ii) of this section, allowing at least 60 days from the submission of complete information to NMFS for processing.

(iv) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31, or portion thereof, if the harvesting nation has provided all the information and authorizations required by paragraphs (f)(9)(i) and (f)(9)(ii) of this section, and has met the requirements of paragraphs (f)(9)(i) and (f)(9)(ii) of this section.

(v) Reconsideration of finding. The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under paragraphs (f)(9)(i) and (f)(9)(ii) of this section.

(vi) Intermediary nation. Except as authorized under this paragraph, no tuna or tuna products classified under one of the HTS numbers listed in paragraph (f)(2)(i) of this section may be imported into the United States from any intermediary nation. An “intermediary nation” is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B) of the MMPA, unless shown not to be yellowfin tuna or yellowfin tuna products harvested using purse seine in the ETP. The Assistant Administrator will publish in the Federal Register a notice announcing when NMFS has determined, based on the best information available, that a nation is an “intermediary nation.” After the effective date of that notice, these import restrictions shall apply. Shipments of yellowfin tuna or yellowfin tuna products shipped through a nation on a through bill of lading or in another manner that does not enter the shipments into that nation as an importation do not make that nation an intermediary nation.

(A) Intermediary nation determination status. Imports from an intermediary nation of tuna and tuna products classified under any of the HTS numbers in paragraph (f)(2)(i) of this section may be imported into the United States only if the Assistant Administrator determines and publishes in the Federal Register that the intermediary nation has provided certification and reasonable proof that it has not imported in the preceding 6 months yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under section 101(a)(2)(B) of the MMPA. At that time, the nation shall no longer be considered an “intermediary nation” and these import restrictions shall no longer apply.

(B) Changing the status of intermediary nation determinations. The Assistant Administrator will review decisions under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. For purposes of this paragraph, the term “certification and reasonable
§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the MMPA and these regulations shall not apply:
   (1) To any marine mammal taken before December 21, 1972, or
   (2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in §216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the Federal Register with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§ 216.26 Collection of certain marine mammal parts without prior authorization.

Notwithstanding any other provision of this subpart:

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within ¼ of a mile of the ocean. The term ocean includes bays and estuaries.

(b) Notwithstanding the provisions of subpart D, soft parts that are sloughed, excreted, or discharged naturally by a

In the context of captive maintenance of marine mammals, the only marine mammals exempted under this section are those that were actually captured or otherwise in captivity before December 21, 1972.
living marine mammal in the wild may be collected or imported for bona fide scientific research and enhancement, provided that collection does not involve the taking of a living marine mammal in the wild.

(c) Any marine mammal part collected under paragraph (a) of this section or any marine mammal part collected and imported under paragraph (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with §216.22(c). In registering a marine mammal part collected or imported under paragraph (b) of this section, the person who collected or imported the part must also state the scientific research or enhancement purpose for which the part was collected or imported.

(d) No person may purchase, sell or trade for commercial purposes any marine mammal part collected or imported under this section.

(e) The export of parts collected without prior authorization under paragraph (b) of this section may occur if consistent with the provisions at §216.37(d) under subpart D.


§216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

(a) Release requirements. (1) Any marine mammal held for rehabilitation must be released within six months of capture or import unless the attending veterinarian determines that:

(i) The marine mammal might adversely affect marine mammals in the wild;

(ii) Release of the marine mammal to the wild will not likely be successful given the physical condition and behavior of the marine mammal; or

(iii) More time is needed to determine whether the release of the marine mammal to the wild will likely be successful. Releasability must be reevaluated at intervals of no less than six months until 24 months from capture or import, at which time there will be a rebuttable presumption that release into the wild is not feasible.

(2) The custodian of the rehabilitated marine mammal shall provide written notification prior to any release into the wild.

(i) Notification shall be provided to:

(A) The NMFS Regional Director at least 15 days in advance of releasing any beached or stranded marine mammal, unless advance notice is waived in writing by the Regional Director; or

(B) The Office Director at least 30 days in advance of releasing any imported marine mammal.

(ii) Notification shall include the following:

(A) A description of the marine mammal, including its physical condition and estimated age;

(B) The date and location of release; and

(C) The method and duration of transport prior to release.

(3) The Regional Director, or the Office Director as appropriate, may:

(i) Require additional information prior to any release;

(ii) Change the date or location of release, or the method or duration of transport prior to release;

(iii) Impose additional conditions to improve the likelihood of success or to monitor the success of the release; or

(iv) Require other disposition of the marine mammal.

(4) All marine mammals must be released near wild populations of the same species, and stock if known, unless a waiver is granted by the Regional Director or the Office Director.

(5) All marine mammals released must be tagged or marked in a manner acceptable to the Regional Director or the Office Director. The tag number or description of the marking must be reported to the Regional Director or Office Director following release.

(b) Non-releasability and postponed determinations. (1) The attending veterinarian shall provide the Regional Director or Office Director with a written report setting forth the basis of any determination under paragraphs (a)(1)(i) through (iii) of this section.

(2) Upon receipt of a report under paragraph (b)(1) of this section, the Regional Director or Office Director, in their sole discretion, may:

(i) Order the release of the marine mammal;
(ii) Order continued rehabilitation for an additional 6 months; or
(iii) Order other disposition as authorized.

(3) No later than 30 days after a marine mammal is determined unreleasable in accordance with paragraphs (a)(1)(i) through (iii) of this section, the person with authorized custody must:

(i) Request authorization to retain or transfer custody of the marine mammal in accordance with paragraph (c) of this section, or;

(ii) Humanely euthanize the marine mammal or arrange any other disposition of the marine mammal authorized by the Regional Director or Office Director.

(4) Notwithstanding any of the provisions of this section, the Office Director may require use of a rehabilitated marine mammal for any activity authorized under subpart D in lieu of animals taken from the wild.

(5) Any rehabilitated beached or stranded marine mammal placed on public display following a non-releasability determination under paragraph (a)(1) of this section and pending disposition under paragraph (c) of this section, or:

(i) Request authorization to retain or transfer custody of the marine mammal in accordance with paragraph (c) of this section, or;

(ii) Humanely euthanize the marine mammal or arrange any other disposition of the marine mammal authorized by the Regional Director or Office Director.

(6) There shall be no remuneration associated with any transfer, provided that, the transferee may reimburse the transferor for any and all costs associated with the rehabilitation and transport of the marine mammal.
§ 216.30 Committee of Scientific Advisors on Marine Mammals, and are conducted pursuant to a scientific research permit.

(d) Reporting. In addition to the report required under §216.22(b), the person authorized to hold marine mammals for rehabilitation must submit reports to the Regional Director or Office Director regarding release or other disposition. These reports must be provided in the form and frequency specified by the Regional Director or Office Director.

[61 FR 21933, May 10, 1996]

Subpart D—Special Exceptions

§ 216.30 [Reserved]

§ 216.31 Definitions.

For the purpose of this subpart, the definitions set forth in 50 CFR part 217 shall apply to all threatened and endangered marine mammals, unless a more restrictive definition exists under the MMPA or part 216.

[61 FR 21935, May 10, 1996]

§ 216.32 Scope.

The regulations of this subpart apply to:

(a) All marine mammals and marine mammal parts taken or born in captivity after December 20, 1972; and

(b) All marine mammals and marine mammal parts that are listed as threatened or endangered under the ESA.

[61 FR 21935, May 10, 1996]

§ 216.33 Permit application submission, review, and decision procedures.

(a) Application submission. Persons seeking a special exemption permit to export living marine mammals, the application must:

(1) Be submitted through the Convention on International Trade in Endangered Fauna and Flora management authority of the foreign government or, if different, the appropriate agency or agencies of the foreign government that exercises oversight over marine mammals.

(2) Include a certification from the foreign government that:

(i) The information set forth in the application is accurate;

(ii) The laws and regulations of the foreign governmentinvolved allow enforcement of the terms and conditions of the permit, and that the foreign government will enforce all terms and conditions; and

(iii) The foreign government involved will afford comity to any permit amendment, modification, suspension or revocation decision.

(c) Initial review. (1) NMFS will notify the applicant of receipt of the application.

(2) During the initial review, the Office Director will determine:

(i) Whether the application is complete.

(ii) Whether the proposed activity is for purposes authorized under this subpart.

(iii) If the proposed activity is for enhancement purposes, whether the species or stock identified in the application is in need of enhancement for its survival or recovery and whether the proposed activity will likely succeed in its objectives.

(iv) Whether the activities proposed are to be conducted consistent with the permit restrictions and permit specific conditions as described in §216.35 and §216.36(a).

(v) Whether sufficient information is included regarding the environmental impact of the proposed activity to enable the Office Director:

(A) To make an initial determination under the National Environmental Policy Act (NEPA) as to whether the proposed activity is categorically excluded from preparation of further environmental documentation, or whether the
preparation of an environmental assessment (EA) or environmental impact statement (EIS) is appropriate or necessary; and

(B) To prepare an EA or EIS if an initial determination is made by the Office Director that the activity proposed is not categorically excluded from such requirements.

(3) The Office Director may consult with the Marine Mammal Commission (Commission) and its Committee of Scientific Advisors on Marine Mammals (Committee) in making these initial, and any subsequent, determinations.

(4) Incomplete applications will be returned with explanation. If the applicant fails to resubmit a complete application or correct the identified deficiencies within 60 days, the application will be deemed withdrawn. Applications that propose activities inconsistent with this subpart will be returned with explanation, and will not be considered further.

(d) Notice of receipt and application review. (1) Upon receipt of a valid, complete application, and the preparation of any NEPA documentation that has been determined initially to be required, the Office Director will publish a notice of receipt in the FEDERAL REGISTER. The notice will:

(i) Summarize the application, including:
(A) The purpose of the request;
(B) The species and number of marine mammals;
(C) The type and manner of special exception activity proposed;
(D) The location(s) in which the marine mammals will be taken, from which they will be imported, or to which they will be exported; and
(E) The requested period of the permit.

(ii) List where the application is available for review.

(iii) Invite interested parties to submit written comments concerning the application within 30 days of the date of the notice.

(iv) Include a NEPA statement that an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an EA or EIS, that an EA was prepared resulting in a finding of no significant impact, or that a final EIS has been prepared and is available for review.

(2) The Office Director will forward a copy of the complete application to the Commission for comment. If no comments are received within 45 days (or such longer time as the Office Director may establish) the Office Director will consider the Commission to have no objection to issuing a permit.

(3) The Office Director may consult with any other person, institution, or agency concerning the application.

(4) Within 30 days of publication of the notice of receipt in the FEDERAL REGISTER, any interested party may request a public hearing on the application.

(5) If the Office Director deems it advisable, the Office Director may hold a public hearing within 60 days of publication of the notice of receipt in the FEDERAL REGISTER. Notice of the date, time, and place of the public hearing will be published in the FEDERAL REGISTER not less than 15 days in advance of the public hearing. Any interested person may appear in person or through representatives and may submit any relevant material, data, views, or comments. A summary record of the hearing will be kept.

(6) The Office Director may extend the period during which any interested party may submit written comments. Notice of the extension must be published in the FEDERAL REGISTER within 60 days of publication of the notice of receipt in the FEDERAL REGISTER.

(7) If, after publishing a notice of receipt, the Office Director determines on the basis of new information that an EA or EIS must be prepared, the Office Director must deny the permit unless an EA is prepared with a finding of no significant impact. If a permit is denied under these circumstances the application may be resubmitted with information sufficient to prepare an EA or EIS, and will be processed as a new application.

(e) Issuance or denial procedures. (1) Within 30 days of the close of the public hearing or, if no public hearing is held, within 30 days of the close of the
§ 216.34 Issuance criteria.

(a) For the Office Director to issue any permit under this subpart, the applicant must demonstrate that:

1. The proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals;

2. The proposed activity is consistent with all restrictions set forth at §216.35 and any purpose-specific restrictions as appropriate set forth at §216.41, §216.42, and §216.43;

3. The proposed activity, if it involves endangered or threatened marine mammals, will be conducted consistent with the purposes and policies set forth in section 2 of the ESA;

4. The proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock;

5. Whether the applicant’s expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application;

6. If a live animal will be held captive or transported, the applicant’s qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal; and

7. Any requested import or export will not likely result in the taking of marine mammals or marine mammal...
parts beyond those authorized by the permit.  
(b) The opinions or views of scientists or other persons or organizations knowledgeable of the marine mammals that are the subject of the application or of other matters germane to the application will be considered.

§ 216.35 Permit restrictions.

The following restrictions shall apply to all permits issued under this subpart:

(a) The taking, importation, export, or other permitted activity involving marine mammals and marine mammal parts shall comply with the regulations of this subpart.

(b) The maximum period of any special exception permit issued, or any major amendment granted, is five years from the effective date of the permit or major amendment. In accordance with the provisions of §216.39, the period of a permit may be extended by a minor amendment up to 12 months beyond that established in the original permit.

(c) Except as provided for in §216.41(c)(1)(v), marine mammals or marine mammal parts imported under the authority of a permit must be taken or imported in a humane manner, and in compliance with the Acts and any applicable foreign law. Importation of marine mammals and marine mammal parts is subject to the provisions of 50 CFR part 14.

(d) The permit holder shall not take from the wild any marine mammal which at the time of taking is either unweaned or less than eight months old, or is a part of a mother-calf/pup pair, unless such take is specifically authorized in the conditions of the special exception permit. Additionally, the permit holder shall not import any marine mammal that is pregnant or lactating at the time of taking or import, or is unweaned or less than eight months old unless such import is specifically authorized in the conditions of the special exception permit.

(e) Captive marine mammals shall not be released into the wild unless specifically authorized by the Office Director under a scientific research or enhancement permit.

(f) The permit holder is responsible for all activities of any individual who is operating under the authority of the permit;

(g) Individuals conducting activities authorized under the permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications;

(h) Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed when undertaking such activities;

(i) Special exception permits are not transferable or assignable to any other person, and a permit holder may not require any direct or indirect compensation from another person in return for requesting authorization for such person to conduct the taking, import, or export activities authorized under the subject permit;

(j) The permit holder or designated agent shall possess a copy of the permit when engaged in a permitted activity, when the marine mammal is in transit incidental to such activity, and whenever marine mammals or marine mammal parts are in the possession of the permit holder or agent. A copy of the permit shall be affixed to any container, package, enclosure, or other means of containment, in which the marine mammals or marine mammal parts are placed for purposes of transit, supervision, or care. For marine mammals held captive and marine mammal parts in storage, a copy of the permit shall be kept on file in the holding or storage facility.

§ 216.36 Permit conditions.

(a) Specific conditions. (1) Permits issued under this subpart shall contain specific terms and conditions deemed appropriate by the Office Director, including, but not limited to:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which marine mammals may be taken according to type of take;

(iii) The location(s) in which the marine mammals may be taken, from
§ 216.37 Marine mammal parts.

With respect to marine mammal parts acquired by take or import authorized under a permit issued under this subpart:

(a) Marine mammal parts are transferrable if:

(1) The person transferring the part receives no remuneration of any kind for the marine mammal part;

(2) The person receiving the marine mammal part is:

(i) An employee of NMFS, the U.S. Fish and Wildlife Service, or any other governmental agency with conservation and management responsibilities, who receives the part in the course of their official duties;

(ii) A holder of a special exception permit which authorizes the take, import, or other activity involving the possession of a marine mammal part of the same species as the subject part; or

(iii) In the case of marine mammal parts from a species that is not depleted, endangered or threatened, a person who is authorized under section 112(c) of the MMPA and subpart C of this part to take or import marine mammals or marine mammal parts;

(iv) Any other person specifically authorized by the Regional Director, consistent with the requirements of paragraphs (a)(1) and (a)(3) through (6) of this section.

(b) The marine mammal part is transferred for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that, for transfers for educational purposes, the recipient is a museum, educational institution or equivalent that will ensure that the part is available to the public as part of an educational program;

(c) A unique number assigned by the permit holder is marked on or affixed to the marine mammal part or container;

(d) The person receiving the marine mammal part agrees that, as a condition of receipt, subsequent transfers may only occur subject to the provisions of paragraph (a) of this section; and

(e) Within 30 days after the transfer, the person transferring the marine mammal part notifies the Regional Director of the transfer, including a description of the part, the person to whom the part was transferred, the purpose of the transfer, certification that the recipient has agreed to comply with the requirements of paragraph (a) of this section for subsequent transfers, and, if applicable, the recipient’s permit number.

(b) Marine mammal parts may be loaned to another person for a purpose described in paragraph (a)(3) of this section and without the agreement and notification required under paragraphs (a)(5) and (6) of this section, if:

(1) A record of the loan is maintained; and

(2) The loan is for not more than one year. Loans for a period greater than 12 months, including loan extensions or renewals, require notification of the Regional Director under paragraph (a)(6).

(c) Unless other disposition is specified in the permit, a holder of a special exception permit may retain marine mammal parts not destroyed or otherwise disposed of during or after a scientific research or enhancement activity, if such marine mammal parts are:

(1) Maintained as part of a properly curated, professionally accredited collection; or

(2) Made available for purposes of scientific research or enhancement at the request of the Office Director.

(d) Marine mammal parts may be exported and subsequently reimported by a permit holder or subsequent authorized recipient, for the purpose of scientific research, maintenance in a
§ 216.39 Permit amendments.

(a) General. Special exception permits may be amended by the Office Director. Major and minor amendments may be made to permits in response to, or independent of, a request from the permit holder. Amendments must be consistent with the Acts and comply with the applicable provisions of this subpart.

(1) A major amendment means any change to the permit specific conditions under §216.36(a) regarding:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which these marine mammals may be taken, imported, exported, or otherwise affected, if the proposed change may result in an increased level of take or risk of adverse impact;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, and to which they may be exported, as applicable; and

(iv) The duration of the permit, if the proposed extension would extend the duration of the permit more than 12 months beyond that established in the original permit.

(2) A minor amendment means any amendment that does not constitute a major amendment.

(b) Amendment requests and proposals.

(1) Requests by a permit holder for an amendment must be submitted in writing and include the following:

(i) The purpose and nature of the amendment;

(ii) Information, not previously submitted as part of the permit application or subsequent reports, necessary to determine whether the amendment satisfies all issuance criteria set forth at §216.34, and, as appropriate, §§216.41, 216.42, and 216.43.

(iii) Any additional information required by the Office Director for purposes of reviewing the proposed amendment.

(2) If an amendment is proposed by the Office Director, the permit holder will be notified of the proposed amendment, together with an explanation.

(c) Review of proposed amendments.

(1) Major amendments. The provisions of §216.33(d) and (e) governing notice of receipt, review and decision shall apply to all proposed major amendments.

(2) Minor amendments. (i) After reviewing all appropriate information, the Office Director will provide the permit holder with written notice of the decision on a proposed or requested amendment, together with an explanation for the decision.

(ii) If the minor amendment extends the duration of the permit 12 months or less from that established in the original permit, notice of the minor amendment will be published in the Federal Register within 10 days from the date of the Office Director's decision.

(iii) A minor amendment will be effective upon a final decision by the Office Director.

[61 FR 21937, May 10, 1996]
§ 216.40 Penalties and permit sanctions.

(a) Any person who violates any provision of this subpart or permit issued thereunder is subject to civil and criminal penalties, permit sanctions and forfeiture as authorized under the Acts, and 15 CFR part 904.

(b) All special exception permits are subject to suspension, revocation, modification and denial in accordance with the provisions of subpart D of 15 CFR part 904.

[61 FR 21938, May 10, 1996]

§ 216.41 Permits for scientific research and enhancement.

In addition to the requirements under §§216.33 through 216.38, permits for scientific research and enhancement are governed by the following requirements:

(a) Applicant. (1) For each application submitted under this section, the applicant shall be the principal investigator responsible for the overall research or enhancement activity. If the research or enhancement activity will involve a periodic change in the principal investigator or is otherwise controlled by and dependent upon another entity, the applicant may be the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) For any scientific research involving captive maintenance, the application must include supporting documentation from the person responsible for the facility or other temporary enclosure.

(b) Issuance Criteria. For the Office Director to issue any scientific research or enhancement permit, the applicant must demonstrate that:

(1) The proposed activity furthered a bona fide scientific or enhancement purpose;

(2) If the lethal taking of marine mammals is proposed:

(i) Non-lethal methods for conducting the research are not feasible; and

(ii) For depleted, endangered, or threatened species, the results will directly benefit that species or stock, or will fulfill a critically important research need.

(3) Any permanent removal of a marine mammal from the wild is consistent with any applicable quota established by the Office Director.

(4) The proposed research will not likely have significant adverse effects on any other component of the marine ecosystem of which the affected species or stock is a part.

(5) For species or stocks designated or proposed to be designated as depleted, or listed or proposed to be listed as endangered or threatened:

(i) The proposed research cannot be accomplished using a species or stock that is not designated or proposed to be designated as depleted, or listed or proposed to be listed as threatened or endangered;

(ii) The proposed research, by itself or in combination with other activities will not likely have a long-term direct or indirect adverse impact on the species or stock;

(iii) The proposed research will either:

(A) Contribute to fulfilling a research need or objective identified in a species recovery or conservation plan, or if there is no conservation or recovery plan in place, a research need or objective identified by the Office Director in stock assessments established under section 117 of the MMPA;

(B) Contribute significantly to understanding the basic biology or ecology of the species or stock, or to identifying, evaluating, or resolving conservation problems for the species or stock; or

(C) Contribute significantly to fulfilling a critically important research need.

(6) For proposed enhancement activities:

(i) Only living marine mammals and marine mammal parts necessary for enhancement of the survival, recovery, or propagation of the affected species or stock may be taken, imported, exported, or otherwise affected under the authority of an enhancement permit. Marine mammal parts would include in this regard clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.

(ii) The activity will likely contribute significantly to maintaining or increasing distribution or abundance, enhancing the health or welfare of the
species or stock, or ensuring the survival or recovery of the affected species or stock in the wild.

(iii) The activity is consistent with:
(A) An approved conservation plan developed under section 115(b) of the MMPA or recovery plan developed under section 4(f) of the ESA for the species or stock; or
(B) If there is no conservation or recovery plan, with the Office Director’s evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation or recovery plan.

(iv) An enhancement permit may authorize the captive maintenance of a marine mammal from a threatened, endangered, or depleted species or stock only if the Office Director determines that:
(A) The proposed captive maintenance will likely contribute directly to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing animal reserves required to support directly these objectives; and
(B) The expected benefit to the species or stock outweighs the expected benefits of alternatives that do not require removal of marine mammals from the wild.

(v) The Office Director may authorize the public display of marine mammals held under the authority of an enhancement permit only if:
(A) The public display is incidental to the authorized captive maintenance;
(B) The public display will not interfere with the attainment of the survival or recovery objectives;
(C) The marine mammals will be held consistent with all requirements and standards that are applicable to marine mammals held under the authority of the Acts and the Animal Welfare Act, unless the Office Director determines that an exception is necessary to implement an essential enhancement activity; and
(D) The marine mammals will be excluded from any interactive program and will not be trained for performance.

(vi) The Office Director may authorize non-intrusive scientific research to be conducted while a marine mammal is held under the authority of an enhancement permit, only if such scientific research:
(A) Is incidental to the permitted enhancement activities; and
(B) Will not interfere with the attainment of the survival or recovery objectives.

(c) Restrictions. (1) The following restrictions apply to all scientific research permits issued under this subpart:
(i) Research activities must be conducted in the manner authorized in the permit.
(ii) Research results shall be published or otherwise made available to the scientific community in a reasonable period of time.
(iii) Research activities must be conducted under the direct supervision of the principal investigator or a co-investigator identified in the permit.
(iv) Personnel involved in research activities shall be reasonable in number and limited to:
(A) Individuals who perform a function directly supportive of and necessary to the permitted research activity; and
(B) Support personnel included for the purpose of training or as backup personnel for persons described in paragraph (c)(1)(iv)(A).

(v) The Office Director may authorize the public display of marine mammals imported under the authority of a scientific research permit only if:
(A) The authority is incidental to the permitted research activity; and
(B) Support personnel included for the purpose of training or as backup personnel for persons described in paragraph (c)(1)(iv)(A).

(v) Any marine mammal part imported under the authority of a scientific research permit must not have been obtained as the result of a lethal taking that would be inconsistent with the Acts, unless authorized by the Office Director.

(vi) Marine mammals held under a permit for scientific research shall not be placed on public display, included in an interactive program or activity, or trained for performance unless such activities:
(A) Are necessary to address scientific research objectives and have been specifically authorized by the Office Director under the scientific research permit; and
(B) Are conducted incidental to and do not in any way interfere with the permitted scientific research; and
§ 216.42 Photography. [Reserved]

§ 216.43 Public display. [Reserved]

§ 216.44 Applicability/transition.

(a) General. The regulations of this subpart are applicable to all persons, including persons holding permits or other authorizing documents issued before June 10, 1996, by NMFS for the take, import, export, or conduct of any otherwise prohibited activity involving a marine mammal or marine mammal part for special exception purposes.

(b) Scientific research. Any intrusive research as defined in §216.3, initiated after June 10, 1996, must be authorized under a scientific research permit. Intrusive research authorized by the Office Director to be conducted on captive marine mammals held for public display purposes prior to June 10, 1996, must be authorized under a scientific research permit one year after June 10, 1996.

[61 FR 21939, May 10, 1996]

§ 216.45 General Authorization for Level B harassment for scientific research.

(a) General Authorization. (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in §216.3, for purposes of bona fide scientific research Provided, That:

(i) They submit a letter of intent in accordance with the requirements of paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217-227, particularly at §222.23 through §222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 feet).

(b) Letter of intent. Except as provided under paragraph (a)(1)(ii) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60
days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in §216.3; and

(vi) The methods to be used to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.

(c) Confirmation that the General Authorization applies or notification of permit requirement.

(1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in §216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the Federal Register notifying the public of letters of confirmation issued.
§216.45  Terms and conditions. Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:
   (i) A summary of research activities conducted;
   (ii) Identification of the species and number of each species taken by Level B harassment;
   (iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and
   (iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section.

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts on marine mammals in the wild. The principal investigator must cooperate with coordination efforts by the Regional Director in this regard;

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:
   (i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and
   (ii) Temporarily discontinue for 72 hours all field research activities that resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.

(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:
   (i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and
   (ii) Provide any documents or other information relating to the scientific research;

(8) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific,
§ 216.72 Restrictions on taking.

(a) The harvests of seals on St. Paul and St. George Islands shall be treated independently for the purposes of this section. Any suspension, termination, or extension of the harvest is applicable only to the island for which it is issued.

§§ 216.47–216.49 [Reserved]

Subpart E—Designated Ports

§ 216.50 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR part 14.

(b) For the information of importers, designated ports of entry for the United States are:

- New York, N.Y.
- Miami, Fla.
- Chicago, Ill.
- San Francisco, Calif.
- Los Angeles, Calif.
- New Orleans, La.
- Seattle, Wash.
- Honolulu, Hi.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

- Alaska—Juneau, Anchorage, Fairbanks
- Hawaii—Honolulu
- Puerto Rico—San Juan
- Guam—Honolulu, Hi.
- American Samoa—Honolulu, Hi.
- Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR part 14 for importation requirements and information.

[59 FR 50376, Oct. 3, 1994]

Subpart F—Pribilof Islands, Taking for Subsistence Purposes

§ 216.71 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is

(a) For subsistence uses, and

(b) Not accomplished in a wasteful manner.

(b) By April 1 of every third year, beginning April 1994, the Assistant Administrator will publish in the Federal Register a summary of the preceding 3 years of harvesting and a discussion of the number of seals expected to be taken annually over the next 3 years to satisfy the subsistence requirements of each island. This discussion will include an assessment of factors and conditions on St. Paul and St. George Islands that influence the need by Pribilof Aleuts to take seals for subsistence uses and an assessment of any changes to those conditions indicating that the number of seals that may be taken for subsistence each year should be made higher or lower. Following a 30-day public comment period, a final notification of the estimated annual harvest levels for the next 3 years will be published.

(c)(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

(2) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of subadult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(3) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(4) Only subadult male fur seals 124.5 centimeters or less in length may be taken.

(5) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

(d) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. Scheduling must be consistent with the following restrictions:

(1) St. Paul Island—Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week.

(2) St. George Island—Seals may only be harvested from the following haulout areas: Northeast and Zapadni. Neither haulout area may be harvested more than twice per week.

(e)(1) The Assistant Administrator is required to suspend the take provided for in §215.31 when:

(i) He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the subsistence needs of the Pribilovians on the island have been satisfied; or

(ii) He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) of this section is reached.

(2) A suspension based on a determination under paragraph (e)(1)(ii) of this section may be lifted by the Assistant Administrator if he finds that the conditions which led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (e)(1)(iii) of this section may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine if a finding under paragraph (e)(1)(i) of this section is warranted. If a the harvest is not suspended under paragraph (e)(1)(i) of this section, the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(f) The Assistant Administrator shall terminate the take provided for in §215.31 on August 8 of each year or when it is determined under paragraph (e)(1)(i) of this section that the subsistence needs of the Pribilovians on the
§ 216.73 Disposition of fur seal parts.

Except for transfers to other Alaskan Natives for barter or sharing for personal or family consumption, no part of a fur seal taken for subsistence uses may be sold or otherwise transferred to any person unless it is a nonedible by-product which:

(a) Has been transformed into an article of handicraft, or
(b) Is being sent by an Alaskan Native directly, or through a registered agent, to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Alaskan Native for conversion into an article of handicraft, or
(c) Is being sold or transferred to an Alaskan Native, or to an agent registered under 50 CFR 216.23(c) for resale or transfer to an Alaskan Native, who will convert the seal part into a handicraft.

§ 216.74 Cooperation with Federal officials.

Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence uses must, consistent with 5 CFR 330.13(b), cooperate with the NMFS representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

(a) The number of seals taken each day in the subsistence harvest,
(b) The extent of the utilization of fur seals taken, and
(c) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under § 215.32(e).

§ 216.81 Visits to fur seal rookeries.

From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

§ 216.82 Dogs prohibited.

In order to prevent molestation of fur seal herds, the landing of any dogs at Pribilof Islands is prohibited.

§ 216.83 Importation of birds or mammals.

No mammals or birds, except household cats, canaries and parakeets, shall be imported to the Pribilof Islands without the permission of an authorized representative of the National Marine Fisheries Service.

§ 216.84 [Reserved]

§ 216.85 Walrus and Otter Islands.

By Executive Order 1044, dated February 27, 1909, Walrus and Otter Islands were set aside as bird reservations. All persons are prohibited to land on these islands except those authorized by the appropriate representative of the National Marine Fisheries Service.

§ 216.86 Local regulations.

Local regulations will be published from time to time and will be brought to the attention of local residents and persons assigned to duty on the Islands.
by posting in public places and brought to the attention of tourists by personal notice.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.87 Wildlife research.

(a) Wildlife research, other than research on North Pacific fur seals, including specimen collection, may be permitted on the Pribilof Islands subject to the following conditions:

(1) Any person or agency, seeking to conduct such research shall first obtain any Federal or State of Alaska permit required for the type of research involved.

(2) Any person seeking to conduct such research shall obtain prior approval of the Director, Pribilof Islands Program, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1700 Westlake Avenue North, Seattle, WA 98109, by filing with the Director an application which shall include:

(i) Copies of the required Federal and State of Alaska permits; and

(ii) A resume of the intended research program.

(3) All approved research shall be subject to all regulations and administrative procedures in effect on the Pribilof Islands, and such research shall not commence until approval from the Director is received.

(4) Any approved research program shall be subject to such terms and conditions as the Director, Pribilof Islands Program deems appropriate.

(5) Permission to utilize the Pribilof Islands to conduct an approved research program may be revoked by the Director, Pribilof Islands Program at any time for noncompliance with any terms and conditions, or for violations of any regulation or administrative procedure in effect on the Pribilof Islands.


Subpart H—Dolphin Safe Tuna Labeling


SOURCE: 61 FR 27794, June 3, 1996, unless otherwise noted.

§ 216.90 Purposes.

This subpart governs the requirements for using the official mark, described in §216.96, or an alternative mark that refers to dolphins, porpoises, or marine mammals, to label tuna or tuna products offered for sale in or exported from the United States using the term “dolphin-safe” or suggesting the tuna were harvested in a manner not injurious to dolphins.

[65 FR 56, Jan. 3, 2000]

§ 216.91 Dolphin-safe labeling standards.

(a) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna products that are exported from or offered for sale in the United States to include on the label of those products the term “dolphin-safe” or any other term or symbol that claims or suggests that the tuna contained in the products were harvested using a method of fishing that is not harmful to dolphins if the products contain tuna harvested:

(1) ETP large purse seine vessel. In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity unless:

(i) The documentation requirements for dolphin-safe tuna under §§216.92 and 216.94 are met;

(ii) No dolphin were killed or seriously injured during the sets in which the tuna were caught; or

(iii) If the Assistant Administrator publishes notification in the FEDERAL REGISTER announcing a finding that the intentional deployment of purse seine nets on or encirclement of dolphins is having a significant adverse impact on any depleted stock:

(A) No tuna products were caught on a trip using a purse seine net intentionally deployed on or to encircle dolphins; and

(B) No dolphins were killed or seriously injured during the sets in which the tuna were caught.

(2) Non-ETP purse seine vessel. Outside the ETP by a vessel using a purse seine net:

(i) In a fishery in which the Assistant Administrator has determined that a
regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied by a written statement, executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

(3) Driftnet. By a vessel engaged in large-scale driftnet fishing; or

(4) Other fisheries. By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a properly completed FCO;

(b) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to willingly and knowingly use a label referred to in this section in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the IDCP.

(c) A tuna product that is labeled with the official mark, described in §216.96, may not be labeled with any other label or mark that refers to dolphins, porpoises, or marine mammals.

[65 FR 57, Jan. 3, 2000]
§216.93 Submission of documentation.

(a) Requirements for the submission of documents concerning the activities of U.S. flag vessels with greater than 400 st carrying capacity fishing in the ETP are contained in §216.94.

(b) The import documents required by §§216.91 and 216.92 must accompany the tuna product whenever it is offered for sale or export, except that these documents need not accompany the product when offered for sale if:

(1) The documents do not require further endorsement by any importer or processor and are submitted to officials of the U.S. Customs Service at the time of import; or

(2) The documents are endorsed as required by §216.92(b)(4) and the final processor delivers the endorsed documents to the Administrator, Southwest Region, or to U.S. Customs as required.

§216.94 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the ‘‘dolphin-safe’’ condition of tuna, under the standards set forth in §216.91(a). The tracking program includes procedures and reports for use when importing tuna into the U.S. and during U.S. purse seine fishing, processing, and marketing in the U.S. and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the IDCP.

(a) Tuna tracking forms. Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing the IATTC cruise number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record ‘‘dolphin-safe’’ sets and a second TTF is used to record ‘‘non-dolphin-safe’’ sets. The information entered on the TTFs following each set includes date of trip, set number, date of loading, name of the vessel, vessel Captain’s name, observer’s name, well number, weights by species composition, estimated tons loaded, and date of the set. The observer and the vessel engineer initial the entry for each set, and the vessel Captain and observer review and sign both TTFs at the end of the fishing trip certifying that the information on the form is accurate. The captain’s and observer’s certification of the TTF on which dolphin-safe sets are recorded complies with 16 U.S.C. 1385(h).

(b) Tracking fishing operations. (1) During ETP fishing trips by purse seine vessels, tuna caught in sets designated as ‘‘dolphin-safe’’ by the vessel observer must be stored separately from tuna caught in ‘‘non-dolphin-safe’’ sets from the time of capture through unloading, except as provided in paragraph (b)(2) of this section. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is ‘‘dolphin-safe’’ or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as ‘‘dolphin-safe’’ if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. Any tuna loaded into a well previously designated ‘‘non-dolphin-safe’’ or ‘‘mixed well’’ is considered ‘‘non-dolphin-safe’’ tuna. The observer will change the designation of a ‘‘dolphin-safe’’ well to ‘‘non-dolphin-safe’’ if any tuna are loaded into the
well that were captured in a set in which a dolphin died or was seriously injured.

(2) **Mixed wells.** Only two acceptable conditions exist under which a “mixed” well can be created.

(i) In the event that a set has been designated “dolphin-safe” by the observer, but during the loading process dolphin mortality or serious injury is identified, the “dolphin-safe” designation of the set will change to “non-dolphin-safe.” If one or more of the wells into which the newly designated “non-dolphin-safe” tuna are loaded already contains “dolphin-safe” tuna loaded during a previous set, the observer will note in his or her trip records the well numbers and the estimated weight of such “non-dolphin-safe” tuna and designate such well(s) as “mixed well(s).” Once a well has been identified as “non-dolphin-safe” or “mixed” all tuna subsequently loaded into that well will be designated as “non-dolphin-safe.”

When the contents of such a “mixed well” are received by a processor, the tuna will be weighed and separated according to the observer’s report of the estimated weight of “dolphin-safe” and “non-dolphin-safe” tuna contained in that well. In addition, 15 percent of the “dolphin-safe” tuna unloaded from the “mixed well” will be designated as “non-dolphin-safe.”

(ii) Near the end of an ETP fishing trip, if the only well space available is in a “non-dolphin-safe” well, and there is an opportunity to make one last set, “dolphin-safe” tuna caught in that set may be loaded into the “non-dolphin-safe” well. The “dolphin-safe” tuna must be kept physically separate from the “non-dolphin-safe” tuna already in the well, using netting or other material.

(3) The captain, managing owner, or vessel agent of a U.S. purse seine vessel returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel’s intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(4) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(5) Tuna offloaded to trucks, storage facilities or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the “dolphin-safe” or “non-dolphin-safe” designation of the tuna as it left the fishing vessel.

(6)(i) When ETP caught tuna is to be offloaded from a U.S. purse seiner directly to a U.S. canner within the 50 states, Puerto Rico, or American Samoa, or in any port and subsequently loaded aboard a carrier vessel for transport to a U.S. processing location, a NMFS representative may meet the U.S. purse seiner to receive the TTFs from the vessel observer and to monitor the handling of “dolphin-safe” and “non-dolphin-safe” tuna.

(ii) When ETP caught tuna is offloaded from an U.S. purse seine in any port and subsequently loaded aboard a carrier vessel for transport to a cannery outside the jurisdiction of the United States, a NMFS representative may meet the vessel to receive copies of the TTFs from the observer and monitor the offloading. The U.S. caught tuna becomes the tracking and verification responsibility of the foreign buyer when it is offloaded from the U.S. vessel.

(iii) If a NMFS representative does not meet the vessel in port at the time of arrival, the observer may take the signed TTFs to the IATTC office and mail copies to the Administrator, Southwest Region, from that location within 5 working days of the end of the trip.

(iv) When ETP caught tuna is offloaded from a U.S. purse seiner directly to a processing facility located outside the jurisdiction of the United States in a country that is a party to the IDCP, the national authority in whose area of jurisdiction the tuna is
to be processed will assume the responsibility for tracking and verification of the tuna offloaded. A representative of the national authority will receive copies of the TTFs from the observer, and copies of the TTFs will be forwarded to the Administrator, Southwest Region.

(c) Tracking cannery operations. (1) Whenever a tuna canning company in the 50 states, Puerto Rico, or American Samoa is scheduled to receive a domestic or imported shipment of ETP caught tuna for processing, the company must provide at least 48 hours notice of the location and arrival date and time of such a shipment, to the Administrator, Southwest Region, so that a NMFS representative can be present to monitor delivery and verify that “dolphin-safe” and “non-dolphin-safe” tuna are clearly identified and remain segregated.

(2) At the close of delivery activities, which may include weighing, boxing or containerizing, and transfer to cold storage or processing, the company must provide a copy of the processor’s receiving report to the NMFS representative, if present. If a NMFS representative is not present, the company must submit a copy of the processor’s receiving report to the Administrator, Southwest Region, electronically, by mail, or by fax within 5 working days. The processor’s receiving report must contain, at a minimum: date of delivery, catcher vessel name and flag, trip number and dates, storage container number(s), “dolphin-safe” or “non-dolphin-safe” designation of each container, species, product description, and weight of tuna in each container.

(3) Tuna canning companies will report on a monthly basis the amounts of ETP-caught tuna that are removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (c)(5) of this section. This report must contain:

(i) The date of removal;
(ii) Storage container number(s) and “dolphin-safe” or “non-dolphin-safe” designation of each container; and
(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, “non-dolphin-safe” tuna may not be mixed in any manner or at any time in its processing with any “dolphin-safe” tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(5) Canned tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the month following the month being reported. Monthly reports must contain the following information:

(i) Domestic receipts: species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to the fourth decimal, ocean area of capture (eastern tropical Pacific, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, trip dates, carrier name, unloading dates, and location of unloading.

(ii) Import receipts: In addition to the information required in paragraph (c)(5)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(d) Tracking imports. All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by §216.24(f).

(e) Verification requirements.—(1) Record maintenance. Any exporter, transhipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must maintain records related to that tuna for at least 3 years. These records include, but are not limited to: FCO and required certifications, any report required in paragraph (a) and (b) of this section, invoices, other import documents, and trip reports.

(2) Record submission. Within 30 days of receiving a written request from the Administrator, Southwest Region, any exporter, transhipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must submit to the Administrator any record required to be maintained under paragraph (e)(1) of this section.
(3) Audits and spot-checks. Upon request of the Administrator, Southwest Region, any such exporter, transshipper, importer, or processor must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, and processed tuna.

(f) Confidentiality of proprietary information. Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216–100 "Protection of Confidential Fisheries Statistics."

[65 FR 57, Jan. 3, 2000]

§ 216.95 False statements or endorsements.

Any person who knowingly and willfully makes a false statement or false endorsement required by §216.92 is liable for a civil penalty not to exceed $100,000, that may be assessed in an action brought in any appropriate District Court of the United States on behalf of the Secretary.

§ 216.96 Official mark for “Dolphin-safe” tuna products.

(a) This is the “official mark” (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the “dolphin-safe” standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385, and implementing regulations at §§216.91 through 216.94:
§ 216.101 Purpose.

The regulations in this subpart implement section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), which provides a mechanism for allowing, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region.

§ 216.102 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of marine mammal(s) and will not have
§216.103 Definitions.

In addition to definitions contained in the MMPA, and in §216.3, and unless the context otherwise requires, in subsequent subparts to this part:

Arctic waters means the marine and estuarine waters north of 60° N. lat.

Citizens of the United States and U.S. citizens mean individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, state and local government agencies shall also constitute citizens of the United States for purposes of this part.

Incidental harassment, incidental taking and incidental, but not intentional, taking all mean an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental. (A complete definition of “take” is contained in §216.3).

Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Small numbers means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

Specified activity means any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.

Specified geographical region means an area within which a specified activity is conducted and that has certain biogeographic characteristics.

Unmitigable adverse impact means an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:
   (i) Causing the marine mammals to abandon or avoid hunting areas;
   (ii) Directly displacing subsistence users; or
   (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

§216.104 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider authorizing the taking by U.S. citizens of small numbers of marine mammals incidental to a specified activity (other than commercial fishing), or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator. All requests must include the following information for their activity:

(1) A detailed description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals;

(2) The date(s) and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be found within the activity area;
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(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;

(5) The type of incidental taking authorization that is being requested (i.e., takes by harassment only; takes by harassment, injury and/or death) and the method of incidental taking;

(6) By age, sex, and reproductive condition (if possible), the number of marine mammals (by species) that may be taken by each type of taking identified in paragraph (a)(5) of this section, and the number of times such takings by each type of taking are likely to occur;

(7) The anticipated impact of the activity upon the species or stock of marine mammal;

(8) The anticipated impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses;

(9) The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;

(10) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(11) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(12) Where the proposed activity would take place in or near a traditional Arctic subsistence hunting area and/or may affect the availability of a species or stock of marine mammal for Arctic subsistence uses, the applicant must submit either a plan of cooperation or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(i) A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;

(ii) A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;

(iii) A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and

(iv) What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation;

(13) The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Monitoring plans should include a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s) including migration and other habitat uses, such as feeding. Guidelines for developing a site-specific monitoring plan may be obtained by writing to the Director, Office of Protected Resources; and

(14) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b)(1) The Assistant Administrator shall determine the adequacy and completeness of a request and, if determined to be adequate and complete, will begin the public review process by publishing in the FEDERAL REGISTER either:

(i) A proposed incidental harassment authorization; or

(ii) A notice of receipt of a request for the implementation or reimplementation of regulations governing the incidental taking.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established under §216.105. Requests for Letters of Authorization shall be submitted to the Director, Office of Protected Resources. The information to be submitted in a request for an authorization will be specified in the appropriate subpart to this part or may be obtained by writing to the above named person.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.
§ 216.107 Incidental harassment authorization for Arctic waters.

(a) Except for activities that have the potential to result in serious injury or mortality, which must be authorized under §216.105, incidental harassment authorizations may be issued, following a 30-day public review period, to allowed activities that may result in only the incidental harassment of a small number of marine mammals. Each such incidental harassment authorization shall set forth:

(1) Permissible methods of taking by harassment;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(b) Issuance of an incidental harassment authorization will be based on a determination that the number of marine mammals taken by harassment will be small, will have a negligible impact on the species or stock of marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses.

(c) An incidental harassment authorization will be either issued or denied within 45 days after the close of the public review period.

(d) Notice of issuance or denial of an incidental harassment authorization will be published in the Federal Register within 30 days of issuance of a determination.

(e) Incidental harassment authorizations will be valid for a period of time not to exceed 1 year but may be renewed for additional periods of time not to exceed 1 year for each reauthorization.

(f) An incidental harassment authorization shall be modified, withdrawn, or suspended if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The conditions and requirements prescribed in the authorization are not being substantially complied with; or

(2) The authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(g) The requirement for notice and opportunity for public review in paragraph (f) of this section shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(h) A violation of any of the terms and conditions of an incidental harassment authorization shall subject theHolder and/or any individual who is operating under the authority of the Holder’s Letter of Authorization to penalties provided in the MMPA.
§ 216.108 Requirements for monitoring and reporting under incidental harassment authorizations for Arctic waters.

(a) Holders of an incidental harassment authorization in Arctic waters and their employees, agents, and designees must cooperate with the National Marine Fisheries Service and other designated Federal, state, or local agencies to monitor the impacts of their activity on marine mammals. Unless stated otherwise within an incidental harassment authorization, the holder of an incidental harassment authorization effective in Arctic waters must notify the Alaska Regional Director, National Marine Fisheries Service, of any activities that may involve a take by incidental harassment in Arctic waters at least 14 calendar days prior to commencement of the activity.

(b) Holders of incidental harassment authorizations effective in Arctic waters may be required by their authorization to designate at least one qualified biological observer or another appropriately experienced individual to observe and record the effects of activities on marine mammals. The number of observers required for monitoring the impact of the activity on marine mammals will be specified in the incidental harassment authorization. If observers are required as a condition of the authorization, the observer(s) must be approved in advance by the National Marine Fisheries Service.

(c) The monitoring program must, if appropriate, document the effects (including acoustical) on marine mammals and document or estimate the actual level of take. The requirements for monitoring plans, as specified in the incidental harassment authorization, may vary depending on the activity, the location, and the time.

(d) Where the proposed activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes, proposed monitoring plans or other research proposals must be independently peer-reviewed prior to issuance of an incidental harassment authorization under this subpart. In order to complete the peer-review process within the time frames mandated by the MMPA for an incidental harassment authorization, a proposed monitoring plan submitted under this paragraph must be submitted to the Assistant Administrator no later than the date of submission of the application for an incidental harassment authorization. Upon receipt of a complete monitoring plan, and at its discretion, the National Marine Fisheries Service will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan. The applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an incidental harassment authorization.

(e) At its discretion, the National Marine Fisheries Service may place an observer aboard vessels, platforms, aircraft, etc., to monitor the impact of activities on marine mammals.

(f)(1) As specified in the incidental harassment authorization, the holder of an incidental harassment authorization for Arctic waters must submit reports to the Assistant Administrator within 90 days of completion of any individual components of the activity (if any), within 90 days of completion of the activity, but no later than 120 days prior to expiration of the incidental harassment authorization, whichever is earlier. This report must include the following information:

(i) Dates and type(s) of activity;
(ii) Dates and location(s) of any activities related to monitoring the effects on marine mammals; and
(iii) Results of the monitoring activities, including an estimate of the actual level and type of take, species name and numbers of each species observed, direction of movement of species, and any observed changes or modifications in behavior.

(2) Monitoring reports will be reviewed by the Assistant Administrator and, if determined to be incomplete or inaccurate, will be returned to the
§ 216.111 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of ringed seals (Phoca hispida) and bearded seals (Erignathus barbatus) by U.S. citizens engaged in on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from the shore outward to 45 mi (72 km) and from Point Barrow east to Demarcation Point, from January 1 through May 31 of any calendar year.

§ 216.112 Effective dates.

Regulations in this subpart are effective from February 2, 1998 through December 31, 2002.

§ 216.113 Permissible methods.

The incidental, but not intentional, taking of ringed and bearded seals from January 1 through May 31 by U.S. citizens holding a Letter of Authorization, issued under § 216.106, is permitted during the course of the following activities:

(a) On-ice geophysical seismic activities involving vibrator-type, airgun, or other energy source equipment shown to have similar or lesser effects.

(b) Operation of transportation and camp facilities associated with seismic activities.

§ 216.114 Mitigation.

(a) All activities identified in § 216.113 must be conducted in a manner that minimizes to the greatest extent practicable adverse effects on ringed and bearded seals and their habitat.

(b) All activities identified in § 216.113 must be conducted as far as practicable from any observed ringed or bearded seal or ringed seal lair. No energy source must be placed over an observed ringed seal lair, whether or not any seal is present.

§ 216.115 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and any other Federal, state, or local agency monitoring the impacts on ringed or bearded seals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to observe and record the presence of ringed or bearded seals and ringed seal lairs along shot lines and around camps, and the information required in paragraph (d) of this section.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) An annual report must be submitted to the Assistant Administrator for Fisheries within 90 days after completing each year’s activities and must include the following information:

1. Location(s) of survey activities.

2. Level of effort (e.g., duration, area surveyed, number of surveys), methods used, and a description of habitat (e.g., ice thickness, surface topography) for each location.

3. Numbers of ringed seals, bearded seals, or other marine mammals observed, proximity to seismic or associated activities, and any seal reactions observed for each location.
§ 216.119 Numbers of ringed seal lairs observed and proximity to seismic or associated activities for each location.


(a) To incidentally take ringed and bearded seals pursuant to these regulations, each company conducting seismic operations between January 1 and May 31 in the geographical area described in §216.111, must apply for and obtain a Letter of Authorization in accordance with §216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 90 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

1. Name of company requesting the authorization;
2. A description of the activity including method to be used (vibroseis, airgun, watergun), the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity;
3. Any plans to monitor the behavior and effects of the activity on marine mammals;
4. A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence sealing; and
5. What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of ringed and bearded seals.

§ 216.117 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 for the activity identified in §216.111 will be renewed annually upon:

1. Timely receipt of the reports required under §216.115(d), which have been reviewed by the Assistant Administrator and determined to be acceptable; and

2. A determination that the mitigation measures required under §216.114(b) and the Letter of Authorization have been undertaken.

(b) A notice of issuance of a Letter of Authorization or of a renewal of a Letter of Authorization will be published in the Federal Register within 30 days of issuance.

§ 216.118 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of §216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization issued pursuant to §216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under §216.117, without modification, is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.111, the Letter of Authorization issued pursuant to §216.106, or renewed pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the Federal Register subsequent to the action.

§ 216.119 [Reserved]
§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in:

(1) Launching up to 10 Minuteman and Peacekeeper missiles each year from Vandenberg Air Force Base, for a total of up to 50 missiles over the 5-year authorization period,

(2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches over the 5-year authorization period,

(3) Aircraft flight test operations,

(4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals (Phoca vitulina), California sea lions (Zalophus californianus), northern elephant seals (Mirounga angustirostris), northern fur seals (Callorhinus ursinus), Guadalupe fur seals (Arctocephalus townsendi), and Steller sea lions (Eumetopias jubatus).

§ 216.121 Effective dates.

Regulations in this subpart are effective from March 1, 1999, through December 31, 2003.

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in §216.120, provided all terms, conditions, and requirements of these regulations and such Letter(s) of Authorization are complied with.

(b) [Reserved]

§ 216.123 Prohibitions.

Notwithstanding takings authorized by §216.120 and by a Letter of Authorization issued under §216.106, no person in connection with the activities described in §216.120 shall:

(a) Take any marine mammal not specified in §216.120(b);

(b) Take any marine mammal specified in §216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in §216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106.

§ 216.124 Mitigation.

(a) The activity identified in §216.120(a) must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.120, the following mitigation measures must be utilized:

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, unless constrained by other factors including, but not limited to, human safety, national security or launch trajectories, in order to ensure minimum negligible impacts of launches on harbor seals and other pinnipeds, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of February through May.

(3) For Titan IV launches only, the holder of that Letter of Authorization must avoid launches, whenever possible, launches during the harbor seal pupping season of February through May.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate
§ 216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §216.106 for activities described in §216.120(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, National Marine Fisheries Service, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to:

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch and continue for a period of time not less than 48 hours subsequent to launching,

(2) Monitor haulout sites on the Northern Channel Islands if it is determined that a sonic boom could impact those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(3) As required under a Letter of Authorization, investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(4) Supplement observations on Vandenberg and on the Northern Channel Islands, if indicated, with video-recording of mother-pup seal responses for daylight launches during the pupping season, and

(5) Conduct acoustic measurements of those launch vehicles not having sound pressure level measurements made previously.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of the Letter of Authorization must submit a report to the Southwest Administrator, National Marine Fisheries Service within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,

(2) Design of the monitoring program, and

(3) Results of the monitoring programs, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haulout prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time(s) pinnipeds remained off the haulout or rookery,

(iv) The numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds noted that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted that describes any incidental takings not reported under paragraph (d) of this section.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impact on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s) location(s) and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.
§ 216.126 Applications for Letters of Authorization.

(a) To incidentally take harbor seals and other marine mammals pursuant to these regulations, either the U.S. citizen (see definition at §216.103) conducting the activity or the 30th Space Wing on behalf of the U.S. citizen conducting the activity, must apply for and obtain a Letter of Authorization in accordance with §216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 30 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

1. Name of the U.S. citizen requesting the authorization,
2. A description of the activity, the dates of the activity, and the specific location of the activity, and
3. Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of seals and sea lions.

§ 216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under §216.126 for the activity identified in §216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under §216.125(d), which have been reviewed by the Assistant Administrator and determined to be acceptable;

(b) A determination that the mitigation measures required under §216.124 and the Letter of Authorization have been undertaken; and

(c) A notice of issuance of a Letter of Authorization or a renewal of a Letter of Authorization will be published in the Federal Register within 30 days of issuance.

§ 216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of §216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to §216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.120(b) or that significantly and detrimentally alters the scheduling of launches, a Letter of Authorization issued pursuant to §216.106 may be substantively modified without a prior notice and an opportunity for public comment. A notice will be published in the Federal Register subsequent to the action.

Subpart L—Taking of Marine Mammals Incidental to Power Plant Operations

SOURCE: 64 FR 28120, May 25, 1999, unless otherwise noted.

EFFECTIVE DATE NOTE: At 64 FR 28120, May 25, 1999, subpart L was added, effective July 1, 1999 through June 30, 2004.

§ 216.130 Specified activity, specified geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of harbor seals (Phoca vitulina), gray seals (Halichoerus grypus), harp seals (Phoca groenlandica), and hooded seals (Cystophora cristata) by U.S. citizens engaged in power plant operations at the Seabrook Station nuclear power plant, Seabrook, NH.

(b) The incidental take of harbor, gray, harp, and hooded seals under the activity identified in this section is limited to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals for each year of the authorization.

§ 216.131 Effective dates.

Regulations in this subpart are effective from July 1, 1999 through June 30, 2004.
§ 216.132 Permissible methods of taking.

Under a Letter of Authorization issued to North Atlantic Energy Services Corporation for Seabrook Station, the North Atlantic Energy Services Corporation may incidentally, but not intentionally, take marine mammals specified in §216.130 in the course of operating the station’s intake cooling water system.

§ 216.133 Prohibitions.

Notwithstanding takings authorized by §216.130(a) and by the Letter of Authorization, issued under §216.106, the following activities are prohibited:

(a) The taking of harbor seals, gray seals, harp seals, and hooded seals that is other than incidental.

(b) The taking of any marine mammal not authorized in this applicable subpart or by any other law or regulation.

(c) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under §216.106.

§ 216.134 Mitigation requirements.

The holder of the Letter of Authorization is required to report, within 6 months from the issuance of a final rule, to the Administrator, Northeast Region, NMFS, on possible mitigation measures effecting the least practicable adverse impact on the seals specified in §216.130. The report shall also include a recommendation of which measures, if any, the holder could feasibly implement. A description of any mitigation measures that Seabrook Station has considered, but determined would not be feasible, must be included as well. After submission of such report, NMFS shall determine whether the holder of the Letter of Authorization must implement measures to effect the least practicable adverse impact on the seals. If NMFS determines that such measures must be implemented then NMFS shall specify, after consultation with the holder of the Letter of Authorization, the schedule and other conditions for implementation of the measures. Implementation of such measures must be completed no later than 42 months after the date of issuance of the final rule.

Failure of the holder of the Letter of Authorization to implement such measures in accordance with the NMFS specifications may be grounds to invalidate the Letter of Authorization.

§ 216.135 Monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with NMFS and any other Federal, state, or local agency monitoring the impacts of the activity on harbor, gray, harp, or hooded seals.

(b) The holder of the Letter of Authorization must designate a qualified individual or individuals capable of identifying any seal or seal parts or marine mammal or marine mammal parts, that occur in the intake circulating system, including the intake transition structure, both forebays, and any marine mammal or marine mammal parts observed as a result of screen washings conducted.

(c) The holder of the Letter of Authorization must conduct at least two daily visual inspections of the circulating water and service water forebays during the period specified in the Letter of Authorization.

(d) The holder of the Letter of Authorization must conduct at least daily inspections of the intake transition structure from April 1 through December, unless weather conditions prevent safe access to the structure.

(e) The holder of the Letter of Authorization must conduct screen washings at least daily during the months of higher incidents of observed takes and this period will be specified in the Letter of Authorization. During the months not specified in the LOA, screen washings will be conducted twice a week. Examination of the debris must be conducted to determine if any seal remains are present.

(f) The holder of the Letter of Authorization must report orally to the Northeast Regional Administrator, NMFS, by telephone or other acceptable means, any marine mammals or marine mammal parts found in the locations specified in §216.135(b) through (e). Such oral reports must be made by the close of the next business day following the finding of any marine mammal or marine mammal parts.
§ 216.136  

(g) The holder of the Letter of Authorization must arrange to have a necropsy examination performed by qualified individuals on any marine mammal or marine mammal parts recovered through monitoring as specified under §216.135(b) through (e). 

(h) The holder of the Letter of Authorization must also provide written notification to the Administrator, Northeast Region, NMFS, of such marine mammal or marine mammal parts found within 30 days from the time of the discovery. This report must contain the results of any examinations or necropsies of the marine mammals in addition to any other information relating to the circumstances of the take. 

(i) An annual report, identifying mitigation measures implemented to effect the least practicable adverse impact on the seals and/or are being considered for implementation pursuant to the requirements specified at §216.134, must be submitted to the Administrator, Northeast Region, NMFS, within 30 days prior to the expiration date of the issuance of the Letter of Authorization.

§ 216.137  Modifications to the Letter of Authorization. 

(a) In addition to complying with the provisions of §216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to §216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under §216.136, without modification, is not considered a substantive modification. 

(b) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.130, the Letter of Authorization issued pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the Federal Register subsequent to the action.

§§ 216.138–216.140  [Reserved] 

Subparts M—N  [Reserved] 

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS SEAWOLF by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast 

SOURCE: 63 FR 66076, Dec. 1, 1998, unless otherwise noted. 

§ 216.161 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the U.S. Atlantic Coast offshore Mayport, FL for the purpose of shock testing the USS SEAWOLF.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Blue whale (Balaenoptera musculus); fin whale (B. physalus); sei whale (B. borealis); Bryde’s whale (B. edeni); minke whale (B. acutorostrata); humpback whale (Megaptera novaeangliae); northern right whale (Eubalaena glacialis); sperm whale (Physeter macrocephalus); dwarf sperm whale (Kogia simus); pygmy sperm whale (Physeter dolhii); Atlantic spotted dolphin (Stenella frontalis); Pantropical spotted dolphin (Stenella attenuata); striped dolphin (Stenella coeruleoalba); spinner dolphin (S. longirostris); Clymene dolphin (S. clymene); bottlenose dolphin (Tursiops truncatus); Risso’s dolphin (Grampus griseus); rough-toothed dolphin (Steno bredanensis); killer whale (Orcinus orca); false killer whale (Pseudorca crassidens); pygmy killer whale (Feresa attenuata); Fraser’s dolphin (Lagenodelphis hosei); harbor porpoise (Phocoena phocoena); melon-headed whale (Peponocephala electra); northern bottlenose whale (Hyperoodon ampullatus); Cuvier’s beaked whale (Ziphius cavirostris); Blainville’s beaked whale (Mesoplodon densirostris); Gervais’ beaked whale (M. europaeus); Sowerby’s beaked whale (M. bidens); True’s beaked whale (M. mirus); common dolphin (Delphinus delphis); and Atlantic white-sided dolphin (Lagenorhynchus acutus).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total of 1 mortality, 5 injuries and 1,788 harassment takes for detonations in the area described in paragraph (a) of this section, except that the taking by serious injury or mortality for species listed in paragraph (b) of this section that are also listed as threatened or endangered under §17.11 of this title, is prohibited.

§ 216.162 Effective dates.

Regulations in this subpart are effective May 1 through September 30 of any single year between the years 2000 and 2004, inclusive.

§ 216.163 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to §216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, injury or mortality in the course detonating 5,436 kg (10,000 lb) conventional explosive charges within the area described in §216.161(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or within the buffer zone prescribed in the Letter of Authorization and on a course that will put them within the safety zone prior to detonation, detonation must be delayed until marine mammals are either no longer within the safety zone or are on a course within the buffer zone that is taking them away from the safety zone, except that no detonation will occur if a marine mammal listed as threatened or endangered under §17.11 of this title is detected within the buffer zone and subsequently cannot be detected until such time as sighting and acoustic teams have searched the area for 2.5 hours (approximately 3 times the typical large whale dive duration). If a northern right whale is seen within the safety or buffer zone, detonation must not occur until the animal is positively reacquired outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer...
§ 216.164 Prohibitions.

Notwithstanding takings authorized by § 216.161(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.165 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the Administrator, Southeast Region at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (g) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to record the effects of explosives detonation on marine mammals that inhabit the Atlantic Ocean test area.

(c) The Atlantic Ocean test area must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, approximately 3 weeks prior to detonation. 48–72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial, shipboard, and acoustic surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone immediately prior to, or at the time of, detonation.

(d) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(e) The holder of the Letter of Authorization is required to measure during the first detonation, and provide a report on, prior to the second detonation, the attenuation of the sound pressure levels of the HBX1 explosive charge. Measurements must be made at a number of distances from the detonation sufficient to verify the model predictions for the 3.7 km (2 nm) safety zone. Based upon the results of this test, the monitoring and safety zones described in the Letter of Authorization, may be modified accordingly.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under §216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place observer(s)
on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(h) A final report must be submitted to the Administrator, Southeast Region, no later than 120 days after completion of shock testing the USS SEAWOLF. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

(i) A final report on results of necropsies of stranded marine mammals funded by the U.S. Navy must be submitted to the Director, Office of Protected Resources, no later than 18 months after completion of shock testing the USS SEAWOLF.

§ 216.166 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of §216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to §216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.161(b), or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in §216.161(a), the Letter of Authorization issued pursuant to §216.106 may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the Federal Register subsequent to the action.

§§ 216.167–216.169 [Reserved]

Subpart P—Taking of Marine Mammals Incidental to Operating A Low Frequency Acoustic Source by the North Pacific Acoustic Laboratory

SOURCE: 66 FR 43458, Aug. 17, 2001, unless otherwise noted.


§ 216.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of small numbers of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in conducting acoustic research using a moored, low-frequency acoustic source by the North Pacific Acoustic Laboratory off Kauai, Hawaii.

(b) The incidental harassment of marine mammals under the activity identified in paragraph (a) of this section is limited to small numbers of the following species: humpback whales (*Megaptera novaengliae*), fin whales (*Balaenoptera physalus*), blue whales (*B. musculus*), Bryde’s whales (*B. edeni*), minke whales (*B. acutorostrata*), North Pacific right whales (*Balaena japonicus*), sperm whales (*Physeter macrocephalus*), short-finned pilot whales (*Globicephala macrocephalus*), beaked whales (*Ziphius cavirostris, Berardius bairdi*, and *Mesoplodon spp.*), spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), striped dolphins (*Stenella coeruleoalba*), bottlenose dolphins (*Tursiops truncatus*), rough-toothed dolphins (*Steno bredanensis*), pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), killer whales (*Orcinus orca*), false killer whales (*Pseudorca crassidens*), pygmy killer whales (*Feresa attenuata*), and melon-headed whales (*Peponocephala electra*).
and Hawaiian monk seals (*Monachus schauinslandi*).

§ 216.171 Effective dates.

Regulations in this subpart are effective from September 17, 2001, through September 17, 2006.

§ 216.172 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to §§ 216.106 and 216.176, the Holder of this Letter of Authorization may incidentally, but not intentionally, take marine mammals by harassment within the area described in § 216.170(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the Letter of Authorization.

(b) The activities identified in § 216.170(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

§ 216.173 Prohibitions.

Notwithstanding takings authorized by § 216.170(b) and by a Letter of Authorization issued under §§ 216.106 and 216.176, no person in connection with the activities described in § 216.170(a) shall:

(a) Take any marine mammal not specified in § 216.170(b);

(b) Take any marine mammal specified in § 216.170(b) other than by incidental, unintentional harassment;

(c) Take any marine mammal specified in § 216.170(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.176.

§ 216.174 Mitigation.

As described in the Letter of Authorization issued under §§ 216.106 and 216.176, the North Pacific Acoustic Laboratory acoustic source must:

(a) Operate at the minimum duty cycle necessary for conducting large-scale acoustic thermometry and long-range propagation objectives.

(b) Not increase the duty cycle during the months of January through April.

(c) Operate at the minimum power level necessary for conducting large-scale acoustic thermometry and long-range propagation objectives, but no more than 260 Watts.

(d) Precede all transmissions from the acoustic source by a 5-minute ramp-up of the acoustic source’s power.

§ 216.175 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the Southwest Regional Administrator at least 2 weeks prior to commencing monitoring activities.

(b) The Holder of this Authorization must conduct a minimum of eight surveys each year from February through early April in the area off the north shore of Kauai, Hawaii, as specified in the Letter of Authorization issued under §§ 216.106 and 216.176.

(c) The Holder of this Authorization must, through coordination with marine mammal stranding networks in Hawaii, monitor strandings of marine mammals to detect long-term trends in stranding and the potential relationship to the North Pacific Acoustic Laboratory acoustic source.

(d) Activities related to the monitoring described in paragraphs (b) and (c) of this section, or in the Letter of Authorization issued under §§ 216.106 and 216.176 may be conducted without the need for a separate scientific research permit.

(e) In coordination and compliance with marine mammal researchers operating under this subpart, at its discretion, the National Marine Fisheries Service may place an observer on any aircraft involved in marine mammal surveys in order to monitor the impact on marine mammals.

(f) The holder of a Letter of Authorization must annually submit a report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 120 days after
§ 216.178 Modifications to a letter of authorization.

(a) In addition to complying with the provisions of §§ 216.106 and 216.176, except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization issued pursuant to §§ 216.106 and 216.176 and subject to the provisions of this subpart shall be made by the National Marine Fisheries Service until after a notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal...
§ 216.200 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in oil and gas development activities in areas within state and/or Federal waters in the U.S. Beaufort Sea specified in paragraph (a) of this section. The authorized activities as specified in a Letter of Authorization issued under §§216.106 and 216.208 include, but may not be limited to, site construction, including ice road and pipeline construction, vessel and helicopter activity; and oil production activities, including ice road construction, and vessel and helicopter activity, but excluding seismic operations.

(a)(1) Northstar Oil and Gas Development; and

(2) [Reserved]

(b) The incidental take by harassment, injury or mortality of marine mammals under the activity identified in this section is limited to the following species: bowhead whale (Balaena mysticetus), gray whale (Eschrichtius robustus), beluga whale (Delphinapterus leucas), ringed seal (Phoca hispida), spotted seal (Phoca largha) and bearded seal (Erignathus barbatus).

§ 216.201 Effective dates.

Regulations in this subpart are effective from May 25, 2000, until May 25, 2005.

§ 216.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.208, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by harassment, injury, and mortality within the area described in §216.200(a), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The activities identified in §216.200 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.203 Prohibitions.

Notwithstanding takings authorized by §216.200 and by a Letter of Authorization issued under §§216.106 and 216.208, no person in connection with the activities described in §216.200 shall:

(a) Take any marine mammal not specified in §216.200(b);

(b) Take any marine mammal specified in §216.200(b) other than by incidental, unintentional harassment, injury or mortality;

(c) Take a marine mammal specified in §216.200(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or a Letter of Authorization issued under §216.106.
§ 216.204 Mitigation.

The activity identified in § 216.200(a) must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.200, the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.208 must be utilized.

§ 216.205 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to § 216.207, or a renewal of a Letter of Authorization pursuant to § 216.209, the applicant must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;
(b) A description of what measures the applicant has taken and/or will take to ensure that oil development activities will not interfere with subsistence whaling or sealing;
(c) What plans the applicant has to continue to meet with the affected communities to notify the communities of any changes in operation.

§ 216.206 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.208 for activities described in § 216.200 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, National Marine Fisheries Service, or his/her designee, by letter or telephone, at least 2 weeks prior to initiating new activities potentially involving the taking of marine mammals.
(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization issued pursuant to § 216.106 and § 216.208.
(c) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.
(d) Unless specified otherwise in the Letter of Authorization, the Holder of that Letter of Authorization must submit interim reports to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 90 days after completion of the winter monitoring season (approximately September 15th), and 90 days after the open water monitoring season (approximately February 1st). This report must contain all information required by the Letter of Authorization.
(e) A draft annual comprehensive report must be submitted by May 1st of the year following the issuance of a LOA;
(f) A final annual comprehensive report must be submitted within the time period specified in the governing Letter of Authorization.
(g) A final comprehensive report on all marine mammal monitoring and research conducted during the effective period of the regulations in this subpart must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations if renewal of the regulations will not be requested.

§ 216.207 Applications for Letters of Authorization.

(a) To incidentally take bowhead whales and other marine mammals pursuant to the regulations in this subpart, the U.S. citizen (see definition at § 216.103) conducting the activity identified in § 216.200, must apply for and obtain either an initial Letter of Authorization in accordance with
§ 216.208

(a) A Letter of Authorization, unless suspended, revoked or not renewed, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.209.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including any requirements for the independent peer-review of proposed monitoring plans.

(c) Issuance and renewal of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.


(a) A Letter of Authorization issued under §§216.106 and 216.208 for the activity identified in §216.200 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under §216.207 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under §216.205, and the Letter of Authorization issued under §§216.106 and 216.208, which have been reviewed by the National Marine Fisheries Service and determined to be acceptable, and the Plan of Cooperation required under §216.205; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under §216.204 and the Letter of Authorization issued under §§216.106 and 216.208, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.208 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a minimum of 30 days for review and comment on the request. Review
§ 222.101 Purpose and scope of regulations.

(a) The regulations of parts 222, 223, and 224 of this chapter implement the Endangered Species Act (Act), and govern the taking, possession, transportation, sale, purchase, barter, exportation, importation of, and other requirements pertaining to wildlife and plants under the jurisdiction of the Secretary of Commerce and determined to be threatened or endangered pursuant to section 4(a) of the Act. These regulations are implemented by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. This part pertains to general provisions and definitions. Specifically, parts 223 and 224 pertain to provisions to threatened species and endangered
species, respectively. Part 226 enumerates designated critical habitat for endangered and threatened species. Certain of the endangered and threatened marine species enumerated in §§ 224.102 and 223.102 are included in Appendix I or II to the Convention on International Trade of Endangered Species of Wild Fauna and Flora. The importation, exportation, and re-exportation of such species are subject to additional regulations set forth at 50 CFR part 23, chapter I.

(b) For rules and procedures relating to species determined to be threatened or endangered under the jurisdiction of the Secretary of the Interior, see 50 CFR parts 10 through 17. For rules and procedures relating to the general implementation of the Act jointly by the Departments of the Interior and Commerce and for certain species under the joint jurisdiction of both the Secretaries of the Interior and Commerce, see 50 CFR Chapter IV. Marine mammals listed as endangered or threatened and subject to these regulations may also be subject to additional requirements pursuant to the Marine Mammal Protection Act (for regulations implementing that act, see 50 CFR part 216).

(c) No statute or regulation of any state shall be construed to relieve a person from the restrictions, conditions, and requirements contained in parts 222, 223, and 224 of this chapter. In addition, nothing in parts 222, 223, and 224 of this chapter, including any permit issued pursuant thereto, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any state or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or any other National Marine Fisheries Service enforced statutes or regulations.

§ 222.102 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.


Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria, under section 10(a)(2)(B) of the Act for the species covered by the plan and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

Alaska Regional Administrator means the Regional Administrator for the Alaska Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Alaska Regional Administrator should be addressed: Alaska Regional Administrator, F/AAK, Alaska Regional Office, National Marine Fisheries Service, NOAA, P.O. Box 21668 Juneau, AK 99802–1668.

Approved turtle excluder device (TED) means a device designed to be installed in a trawl net forward of the cod end for the purpose of excluding sea turtles from the net, as described in 50 CFR 223.207.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his authorized representative. Mail sent to the Assistant Administrator should be addressed: Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

Atlantic Area means all waters of the Atlantic Ocean south of 36°33'00.8" N. lat. (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area, and all waters shoreward thereof (including ports).

Atlantic Shrimp Fishery—Sea Turtle Conservation Area (Atlantic SFSTCA) means the inshore and offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Georgia and South Carolina from the Georgia-Florida border (defined as the line along 30°42'45.6" N. lat.) to the...
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North Carolina-South Carolina border (defined as the line extending in a direction of 135°34′55″ from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 078°32′32.6″ W. long.).

Authorized officer means:
(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
(2) Any special agent or enforcement officer of the National Marine Fisheries Service;
(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or
(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimper means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

Beam trawl means a trawl with a rigid frame surrounding the mouth that is towed from a vessel by means of one or more cables or ropes.

Certificate of exemption means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any certificate of exemption.

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and NMFS and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

Commercial activity means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, that it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

Conservation plan means the plan required by section 10(a)(2)(A) of the Act that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as "habitat conservation plans" or "HCPs."

Conserved habitat areas means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

Cooperative Agreement means an agreement between a state(s) and the National Marine Fisheries Service, NOAA, Department of Commerce, which establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened pursuant to section 6(c)(1) of the Endangered Species Act.

Fishing, or to fish, means:
(1) The catching, taking, or harvesting of fish or wildlife;
(2) The attempted catching, taking, or harvesting of fish or wildlife;
(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or
(4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

Footrope means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forward-most webbing.

Footrope length means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forward-most webbing.

Foreign commerce includes, among other things, any transaction between persons within one foreign country, or between persons in two or more foreign countries, or between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

Four-seam, straight-wing trawl means a design of shrimp trawler in which the main body of the trawl is formed from a top panel, a bottom panel, and two
side panels of webbing. The upper and lower edges of the side panels of webbing are parallel over the entire length.

Four-seam, tapered-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing converge toward the rear of the trawl.

Gulf Area means all waters of the Gulf of Mexico west of 81° W. long. (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA) means the offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River (west of 89°08.5′ W. long.) to the U.S.-Mexican border.

Habitat restoration activity means an activity that has the sole objective of restoring natural aquatic or riparian habitat conditions or processes.

Harm in the definition of “take” in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forward-most webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forward-most webbing.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

Inshore means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Leatherback conservation zone means that portion of the Atlantic Area lying north of a line along 28°24.6′ N. lat. (Cape Canaveral, FL).

Northeast Regional Administrator means the Regional Administrator for the Northeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northeast Regional Administrator should be addressed: Northeast Regional Administrator, F/NE, Northeast Regional Office, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298.

Northwest Regional Administrator means the Regional Administrator for the Northwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northwest Regional Administrator should be addressed: Northwest Regional Administrator, F/NW, Northwest Regional Office, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Office of Enforcement means the national fisheries enforcement office of the National Marine Fisheries Service. Mail sent to the Office of Enforcement should be addressed: Office of Enforcement, F/EN, National Marine Fisheries Service, NOAA, 8484 Suite 415, Georgia Ave., Silver Spring, MD 20910.

Office of Protected Resources means the national program office of the endangered species and marine mammal programs of the National Marine Fisheries Service. Mail sent to the Office of Protected Resources should be addressed: Office of Protected Resources, F/PR, National Marine Fisheries Service, NOAA, 1315 East West Highway, Silver Spring, MD 20910.
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Offshore means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a Conservation Plan or its Implementing Agreement. These activities are to be undertaken for the affected species when implementing an approved Conservation Plan, including measures to respond to changed circumstances.

Permit means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends, or renews any permit.

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal government of any state or political subdivision thereof or of any foreign government.

Possession means the detention and control, or the manual or ideal custody of anything that may be the subject of property, for one’s use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one’s place and name. Possession includes the act or state of possessing and that condition of facts under which persons can exercise their power over a corporeal thing at their pleasure to the exclusion of all other persons. Possession includes constructive possession that which means not an actual but an assumed existence one claims to hold by virtue of some title, without having actual custody.

Pre-Act endangered species part means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

Properly implemented conservation plan means any conservation plan, implementing agreement, or permit whose commitments and provisions have been or are being fully implemented by the permittee.

Pusher-head trawl (chopsticks) means a trawl that is spread by two poles suspended from the bow of the trawler in an inverted “V” configuration.

Resident species means, for purposes of entering into cooperative agreements with any state pursuant to section 6(c) of the Act, a species that exists in the wild in that state during any part of its life.

Right whale means, as used in part 224 of this chapter, any whale that is a member of the western North Atlantic population of the northern right whale species (Eubalaena glacialis).

Roller trawl means a variety of beam trawl that is used, usually by small vessels, for fishing over uneven or vegetated sea bottoms.

Scrimshaw product means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

Secretary means the Secretary of Commerce or an authorized representative.

Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

2. White shrimp (Penaeus setiferus).
3. Pink shrimp (Penaeus duorarum).
4. Rock shrimp (Stenopodium boreostris).
5. Royal red shrimp (Hymenopenaeus robustus).
6. Seabob shrimp (Xiphopenaeus kroyeri).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or 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.

*Skimmer trawl* means a trawl that is fished along the side of the vessel and is held open by a rigid frame and a lead weight. On its outboard side, the trawl is held open by one side of the frame extending downward and, on its inboard side, by a lead weight attached by cable or rope to the bow of the vessel.

**Southeast Regional Administrator** means the Regional Administrator for the Southeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southeast Regional Administrator should be addressed: Southeast Regional Administrator, F/SE, Southeast Regional Office, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432.

**Southwest Regional Administrator** means the Regional Administrator for the Southwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southwest Regional Administrator should be addressed: Southwest Regional Administrator, F/SW, Southwest Regional Office, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802-4213.

**Stretched mesh size** means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

**Summer flounder** means the species *Paralichthys dentatus*.

**Summer flounder fishery-sea turtle protection area** means all offshore waters, bounded on the north by a line along 37° 34.5′ N. lat. (Cape Charles, VA) and bounded on the south by a line extending in a direction of 135° 34.5′ from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33° 51.67′ N. lat., 078° 35.32′ W. long (the North Carolina-South Carolina border).

**Summer flounder trawler** means any vessel that is equipped with one or more bottom trawl nets and that is capable of, or used for, fishing for flounder or whose on-board or landed catch of flounder is more than 100 lb (45.4 kg).

**Tape** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

**Taper**, in reference to the webbing used in trawls, means the angle of a cut used to shape the webbing, expressed as the ratio between the cuts that reduce the width of the webbing by cutting into the panel of webbing through one row of twine (bar cuts) and the cuts that extend the length of the panel of webbing by cutting straight aft through two adjoining rows of twine (point cuts). For example, sequentially cutting through the lengths of twine on opposite sides of a mesh, leaving an uncut edge of twines all lying in the same line, produces a relatively strong taper called “all-bars”; making a sequence of 4-bar cuts followed by 1-point cut produces a more gradual taper called “4 bars to 1 point” or “4bp”; similarly, making a sequence of 2-bar cuts followed by 1-point cut produces a still more gradual taper called “2bp”; and making a sequence of cuts straight aft does not reduce the width of the panel and is called a “straight” or “all-points” cut.

**Taut** means a condition in which there is no slack in the net webbing.

**Test net**, or **try net**, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

**Tongue** means any piece of webbing along the top, center, leading edge of a trawl, whether lying behind or ahead of the headrope, to which a towing bridle can be attached for purposes of pulling the trawl net and/or adjusting the shape of the trawl.

**Transportation** means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.
Triple-wing trawl means a trawl with a tongue on the top, center, leading edge of the trawl and an additional tongue along the bottom, center, leading edge of the trawl.

Two-seam trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top and a bottom panel of webbing that are directly attached to each other down the sides of the trawl.

Underway with respect to a vessel, means that the vessel is not at anchor, or made fast to the shore, or aground.

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and NMFS at the time of the conservation plan’s negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

Vessel means a vehicle used, or capable of being used, as a means of transportation on water which includes every description of watercraft, including nondisplacement craft and seaplanes.

Vessel restricted in her ability to maneuver has the meaning specified for this term at 33 U.S.C. 2003(g).

Wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Wing net (butterfly trawl) means a trawl that is fished along the side of the vessel and that is held open by a four-sided, rigid frame attached to the outrigger of the vessel.

§ 222.103 Federal/state cooperation in the conservation of endangered and threatened species.

(a) Application for and renewal of cooperative agreements. (1) The Assistant Administrator may enter into a Cooperative Agreement with any state that establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened. In order for a state program to be deemed an adequate and active program, the Assistant Administrator must find, and annually reconfirm that the criteria of either sections 6(c)(1) (A) through (E) or sections 6(c)(1) (i) and (ii) of the Act have been satisfied.

(2) Following receipt of an application by a state for a Cooperative Agreement with a copy of a proposed state program, and a determination by the Assistant Administrator that the state program is adequate and active, the Assistant Administrator shall enter into an Agreement with the state.

(3) The Cooperative Agreement, as well as the Assistant Administrator’s finding upon which it is based, must be reconfirmed annually to ensure that it reflects new laws, species lists, rules or regulations, and programs and to demonstrate that it is still adequate and active.

(b) Allocation and availability of funds.

(1) The Assistant Administrator shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various states using the following as the basis for the determination:

(i) The international commitments of the United States to protect endangered or threatened species;

(ii) The readiness of a state to proceed with a conservation program consistent with the objectives and purposes of the Act;

(iii) The number of federally listed endangered and threatened species within a state;

(iv) The potential for restoring endangered and threatened species within a state; and

(v) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

(2) Funds allocated to a state are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. Obligation of allocated funds occurs when an award or contract is signed by the Assistant Administrator.
§ 222.201 Financial assistance and payments.

(1) A state must enter into a Cooperative Agreement before financial assistance is approved by the Assistant Administrator for endangered or threatened species projects. Specifically, the Agreement must contain the actions that are to be taken by the Assistant Administrator and/or by the state, the benefits to listed species expected to be derived from these actions, and the estimated cost of these actions.

(2) Subsequent to such Agreement, the Assistant Administrator may further agree with a state to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an application for Federal assistance and an award or a contract. The availability of Federal funds shall be contingent upon the continued existence of the Cooperative Agreement and compliance with all applicable Federal regulations for grant administration and cost accounting principles.

(3)(i) The payment of the Federal share of costs incurred when conducting activities included under a contract or award shall not exceed 75 percent of the program costs as stated in the agreement. However, the Federal share may be increased to 90 percent when two or more states having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such states, jointly enter into an agreement with the Assistant Administrator.

(ii) The state share of program costs may be in the form of cash or in-kind contributions, including real property, subject to applicable Federal regulations.

(4) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all necessary or required documents are first submitted to and approved by the Assistant Administrator. Payments shall only be made for expenditures reported and certified by the state agency. Payments shall be made only to the state office or official designated by the state agency and authorized under the laws of the state to receive public funds for the state.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

§ 222.201 General requirements.

(a) The Assistant Administrator may exempt any pre-Act endangered species part from the prohibitions of sections 9(a)(1)(A), 9(a)(1)(E), or 9(a)(1)(F) of the Act.

(1) No person shall engage in any activities identified in such sections of the Act that involve any pre-Act endangered species part without a valid Certificate of Exemption issued pursuant to this subpart B.

(2) No person may export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid Certificate of Exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

(3) Any person engaged in activities otherwise prohibited under the Act or regulations shall bear the burden of proving that the exemption or certificate is applicable, was granted, and was valid and in force at the time of the otherwise prohibited activity.

(b) Certificates of Exemption issued under this subpart are no longer available to new applicants. However, the Assistant Administrator may renew or modify existing Certificates of Exemption as authorized by the provisions set forth in this subpart.

(c) Any person granted a Certificate of Exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold and must inform the purchaser in writing of the purchaser’s obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser’s report is to be sent.
(d) Any purchaser of pre-Act endangered species parts included in a valid Certificate of Exemption, unless an ultimate user, within 30 days after the receipt of such parts, must submit a written report to the address given in the certificate. The report must specify the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. The term “ultimate user”, for purposes of this paragraph, means any person who acquired such endangered species part or product for his or her own consumption or for other personal use (including gifts) and not for resale.

§ 222.202 Certificate renewal.

(a) Any person to whom a Certificate of Exemption has been issued by the National Marine Fisheries Service may apply to the Assistant Administrator for renewal of such certificate. Any person holding a valid Certificate of Exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, may apply to the Secretary for one renewal for a period not to exceed 5 years.

(b) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of paragraph (c) of this section. At least 15 days should be allowed for processing. When an application for a renewal has been received and deemed sufficient, the Assistant Administrator shall issue a Certificate of Renewal to the applicant as soon as practicable.

(c) The following information will be used as the basis for determining whether an application for renewal of a Certificate of Exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption.
(2) The date of application.
(3) The identity of the applicant, including complete name, original Certificate of Exemption number, current address, and telephone number. If the applicant is a corporation, partnership, or association, set forth the details.

(4) The period of time for which a renewal of the Certificate of Exemption is requested. However, no renewal of Certificate of Exemption, or right claimed thereunder, shall be effective after the close of the 5-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: A unique serial number; the weight of the item to the nearest whole gram; and a detailed description sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00-000000-0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder’s inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. The number must remain affixed to the item until the item is sold to an ultimate user, as defined in §222.201(d).

(iii) No renewals will be issued for scrimshaw products in excess of any
§ 222.203 Modification, amendment, suspension, and revocation of certificates.

(a) When circumstances have changed so that an applicant or certificate holder desires to have any material, term, or condition of the application or certificate modified, the applicant or certificate holder must submit in writing full justification and supporting information in conformance with the provisions of this part.

(b) All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a Certificate of Exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.

(c) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a condition of the certificate may subject the certificate holder to penalties provided in the Act and to suspension, revocation, or modification of the Certificate of Exemption, as provided in subpart D of 15 CFR part 904.

§ 222.204 Administration of certificates.

(a) The Certificate of Exemption covers the business or activity specified in the Certificate of Exemption at the address described therein. No Certificate of Exemption is required to cover a separate warehouse facility used by the certificate holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the Certificate of Exemption served by the warehouse or storage facility.

(b) Certificates of Exemption issued under this subpart are not transferable. However, in the event of the lease, sale, or other transfer of the operations or activity authorized by the Certificate of Exemption, the successor is not required to obtain a new Certificate of Exemption prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in § 222.201(d).

(c) The Certificate of Exemption holder must notify the Assistant Administrator, in writing, of any change in address, in trade name of the business, or in activity specified in the certificate. The Assistant Administrator must be notified within 10 days of a change of address, and within 30 days of a change in trade name. The certificate with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended certificate to the person to whom it was issued. A certificate holder who seeks amendment of a certificate may continue all authorized activities while awaiting action by the Assistant Administrator.

(d) A Certificate of Exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to state or other law. Similarly, compliance with the provisions of any state or other law affords no immunity under any Federal laws or regulations of any other Federal agency.

(e) Any person authorized to enforce the Act may enter the premises of any Certificate of Exemption holder or of any purchaser during business hours,
including places of storage, for the purpose of inspecting or of examining any records or documents and any endangered species parts.

(f) The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form and shall be retained at the address shown on the Certificate of Exemption or at the principal address of a purchaser in the manner prescribed by this subpart.

(g)(1) Holders of Certificates of Exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, as defined in §222.201(d), must similarly maintain records of all such parts or products they receive.

(2) Such records referred to in paragraph (g)(1) of this section may consist of invoices or other commercial records, which must be filed in an orderly manner separate from other commercial records maintained and be readily available for inspection. Such records must show the name and address of the purchaser, seller, or other transferor; show the type, quantity, and identity of the part or product; show the date of such sale or transfer; and be retained, in accordance with the requirements of this subpart, for a period of not less than 3 years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a Certificate of Exemption.

(i) Each Certificate of Exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (g)(2) of this section when the record holder demonstrates that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

§222.205 Import and export requirements.

(a) Any fish and wildlife subject to the jurisdiction of the National Marine Fisheries Service and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port(s) designated by the Secretary of the Interior. Shellfish and fishery products that are neither endangered nor threatened species and that are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes are excluded from this requirement. The Secretary of the Interior may permit the importation or exportation at non-designated ports in the interest of the health or safety of the species for other reasons if the Secretary deems it appropriate and consistent with the purpose of facilitating enforcement of the Act and reducing the costs thereof. Importers and exporters are advised to see 50 CFR part 14 for importation and exportation requirements and information.

(b) No pre-Act endangered species part shall be imported into the United States. A Certificate of Exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

(c)(1) Any person exporting from the United States any pre-Act endangered species part must possess a valid Certificate of Exemption issued in accordance with the provisions of this subpart. In addition, the exporter must provide to the Assistant Administrator, in writing, not less than 10 days prior to shipment, the following information: The name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. No shipment may be made until these requirements are met by the exporter.
§ 222.301 General requirements.

(a)(1) The regulations in this subpart C provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to parts 222, 223, and 224 of this chapter. While this section provides generic rules and procedures applicable to all permits, other sections may provide more specific rules and procedures with respect to certain types of permits. In such cases, the requirements in all applicable sections must be satisfied.

(b) Notwithstanding paragraph (a)(1) of this section, the Assistant Administrator may approve variations from the requirements of parts 222, 223, and 224 of this chapter when the Assistant Administrator finds that an emergency exists and that the proposed variations will not hinder effective administration of those parts and will not be unlawful. Other sections within parts 222, 223, and 224 of this chapter may allow for a waiver or variation of specific requirements for emergency situations, upon certain conditions. In such cases, those conditions must be satisfied in order for the waiver or variation to be lawful.

(2) The exporter must send a copy of the Certificate of Exemption, and any endorsements thereto, to the District Director of Customs at the port of exportation, which must precede or accompany the shipment in order to permit the appropriate inspection prior to lading. Upon receipt, the District Director may order such inspection, as deemed necessary; the District will clear the merchandise for export, prior to the lading of the merchandise. If they are satisfied that the shipment is proper and complies with the information contained in the certificate and any endorsement thereto. The certificate, and any endorsements, will be forwarded to the Chief of the Office of Enforcement for NMFS.

(c) Each person intending to engage in an activity for which a permit is required by parts 222, 223, and 224 of this chapter or by the Act shall, before commencing such activity, obtain a valid permit authorizing such activity. Any person who desires to obtain permit privileges authorized by parts 222, 223, and 224 of this chapter or by the Act shall, before commencing such activity, obtain a valid permit authorizing such activity. Any person who desires to obtain permit privileges authorized by parts 222, 223, and 224 of this chapter must apply for such permit in accordance with the requirements of these sections. If the information required for each specific, permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

(d)(1) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or of an agent of such person) while any animal subject to the permit is in the possession of such person or agent. Specifically, a person or his/her agent must be in possession of a permit during the time of the authorized taking.
§ 222.302 Procedure for obtaining permits.

(a) Applications must be submitted to the Assistant Administrator, by letter containing all necessary information, attachments, certification, and signature, as specified by the regulations in parts 222, 223, and 224 of this chapter, or to the Act. In no case, other than for emergencies pursuant to §222.301(a)(2), will applications be accepted either orally or by telephone.

(b) Applications must be received by the Assistant Administrator at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective, unless otherwise specified in the regulations or guidelines pertaining to a particular permit. The National Marine Fisheries Service will attempt to process applications deemed sufficient in the shortest possible time, but does not guarantee that the permit will be issued 90 days after notice of receipt of the application is published in the Federal Register.

(c)(1) Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

(2) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the...
requirements of this part. The Assistant Administrator, however, may waive any requirement for information or require any elaboration or further information deemed necessary.

§ 222.303 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless an emergency pursuant to § 222.301(a)(2) exists, and a written variation from the requirements is recorded by the National Marine Fisheries Service.

(2) No representation of an employee or agent of the United States shall be construed as a permit unless it meets the requirements of a permit defined in § 222.102.

(3) Each permit shall bear a serial number. Upon renewal, such a number may be reassigned to the permittee to whom issued so long as the permittee maintains continuity of renewal.

(b) When an application for a permit received by the Assistant Administrator is deemed sufficient, the Assistant Administrator shall, as soon as practicable, publish a notice in the FEDERAL REGISTER. Information received by the Assistant Administrator as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party, within 30 days after the date of publication of such notice, may submit to the Assistant Administrator written data, views, or arguments with respect to the taking, importation, or to other action proposed in the application, and may request a hearing in connection with the action to be taken thereon.

(c) If a request for a hearing is made within the 30-day period referred to in paragraph (b) of this section, or if the Assistant Administrator determines that a hearing would otherwise be advisable, the Assistant Administrator may, within 60 days after the date of publication of the notice referred to in paragraph (b) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear at the hearing in person or through a representative and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(d) Except as provided in subpart D to 15 CFR part 904, as soon as practicable but not later than 30 days after the close of the hearing. If no hearing is held, as soon as practicable but not later than 30 days from the publication of the notice in the FEDERAL REGISTER, the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(e)(1) The Assistant Administrator shall issue the permit unless:

(i) Denial of the permit has been made pursuant to subpart D to 15 CFR part 904;

(ii) The applicant has failed to disclose material or information required, or has made false statements as to any material fact, in connection with the application;

(iii) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(iv) The authorization requested potentially threatens a fish or wildlife population; or

(v) The Assistant Administrator finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(2) The applicant shall be notified in writing of the denial of any permit request, and the reasons thereof. If authorized in the notice of denial, the applicant may submit further information or reasons why the permit should not be denied. Such further information shall not be considered a new application. The final action by the Assistant Administrator shall be considered the final administrative decision of the Department of Commerce.

(f) If a permit is issued under § 222.308, the Assistant Administrator shall publish notice thereof in the FEDERAL REGISTERS.
§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade
§ 222.307 Permits for incidental taking of species.

(a) Scope. (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) Permit application procedures. Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

(1) The type of application, either:
   (i) Application for an Individual Incidental Take Permit under the Act; or
   (ii) Application for a General Incidental Take Permit under the Act;

(2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;

(3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;

(4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;

(5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:
   (i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;
   (ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;
   (iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;
(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) Issuance criteria. (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

(i) The status of the affected species or stocks;

(ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;

(iii) The availability of effective monitoring techniques;

(iv) The use of the best available technology for minimizing or mitigating impacts; and

(v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that—

(i) The taking will be incidental;

(ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;

(iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and

(v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

(d) Permit conditions. In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) Duration of permits. The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.

(f) Certificates of inclusion. (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;

(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, including the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will
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(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:
   (i) The applicant will be engaged in the activity covered by the general permit, and
   (ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) Assurances provided to permittee in case of changed or unforeseen circumstances. The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

   (1) Changed circumstances provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan’s operating conservation program, the permittee will implement the measures specified in the plan.

   (2) Changed circumstances not provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

   (3) Unforeseen circumstances. (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.
   (ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan’s operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

   (iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:
   (A) Size of the current range of the affected species;
   (B) Percentage of range adversely affected by the conservation plan;
   (C) Percentage of range conserved by the conservation plan;
   (D) Ecological significance of that portion of the range affected by the conservation plan;
   (E) Level of knowledge about the affected species and the degree of specificity of the species’ conservation program under the conservation plan; and
   (F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

   (h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or Tribal government agency, or
§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) Scope. The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) Application procedures. Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in §222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

(i) Title, as applicable, either—

(ii) Application for permit for scientific purposes under the Act.

(iii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.

(ii) The date of the application.

(iii) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.

(4) A description of the purpose of the proposed acts, including the following:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including the following:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed project or program has broader significance than the individual researcher’s goals. For example, does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species? If so, how; and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the...
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location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and

(vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.

(7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any planned future move or transfer of the animals;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used to hold the animal at both the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff;

(vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certificate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian’s opinion, they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant’s proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of propagation or survival of the affected species;
(ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;

(iii) The cause(s) of any such mortality; and

(iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301–713–1401. Allow at least 90 days for processing.

(c) Issuance criteria. In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity, the applicant’s qualifications for the proper care and maintenance of the species and the adequacy of the applicant’s facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant’s project or program terminates;

(10) How the applicant’s needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application.

(d) Terms and conditions. Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

(1) The number and kind of species covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care, and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny, or the species product; and

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead
§ 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea turtles; zoological exhibition or educational purposes for threatened species of sea turtles; and permits that requires coordination with the Fish and Wildlife Service. The National Marine Fisheries Service maintains jurisdiction for such species in the marine environment. The Fish and Wildlife Service maintains jurisdiction for such species of sea turtles in the land environment.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permittees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

Subpart A—General Provisions

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223.102 Enumeration of threatened marine and anadromous species.

Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

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223.204 Exceptions to prohibitions relating to anadromous fish.
223.205 Sea turtles.
223.206 Exceptions to prohibitions relating to sea turtles.
223.207 Approved TEDs.
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FIGURE 2 TO PART 223—CAMERON TED
FIGURE 3 TO PART 223—MATAGORDA TED
FIGURE 4 TO PART 223—GEORGIA TED
FIGURE 5 TO PART 223—NET DIAGRAM FOR THE EXCLUDER PANEL OF THE PARKER SOFT TED
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FIGURE 12a TO PART 223—ATTACHMENT OF THE EXIT HOLE COVER
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Subpart A—General Provisions

§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations contained in this part apply only to the threatened species enumerated in § 223.102.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing threatened species.

[64 FR 14068, Mar. 23, 1999]

§ 223.102 Enumeration of threatened marine and anadromous species.

The species determined by the Secretary of Commerce to be threatened pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) Marine and anadromous fish.

(1) Snake River spring/summer chinook salmon (Oncorhynchus tshawytscha). Includes all natural population(s) of spring/summer chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, and Salmon River.

(2) Snake River fall chinook salmon (Oncorhynchus tshawytscha). Includes all natural population(s) of fall chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, and Salmon River.

(3) Central California Coast Coho Salmon (Oncorhynchus kisutch). Includes all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, CA, and the San Lorenzo River in Santa Cruz County, CA.

(4) Southern Oregon/Northern California Coast coho salmon (Oncorhynchus kisutch). Includes all coho salmon naturally reproduced in streams between Cape Blanco in Curry County, OR, and Punta Gorda in Humboldt County, CA.

(5) Central California Coast steelhead (Oncorhynchus mykiss). Includes all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, California (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento-San Joaquin River Basin of the Central Valley of California.

(6) South-Central California Coast steelhead (Oncorhynchus mykiss). Includes all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz County, California, to (but not including) the Santa Maria River.

(7) Snake River Basin steelhead (Oncorhynchus mykiss). Includes all naturally spawned populations of steelhead (and their progeny) in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho.

(8) Lower Columbia River steelhead (Oncorhynchus mykiss). Includes all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls and steelhead from the Little and Big White Salmon Rivers in Washington.

(9) Central Valley, California steelhead (Oncorhynchus mykiss). Includes all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries. Excluded are steelhead from San Francisco and San Pablo Bays and their tributaries.

(10) Oregon Coast coho salmon (Oncorhynchus kisutch). Includes all naturally spawned populations of coho.
(10) Salmon in streams south of the Columbia River and north of Cape Blanco in Curry County, OR.

(11) Gulf sturgeon (Acipenser oxyrinchus desotoi).

(12) Hood Canal summer-run chum salmon (Oncorhynchus keta). Includes all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington.

(13) Columbia River chum salmon (Oncorhynchus keta). Includes all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon.

(14) Upper Willamette River steelhead (Oncorhynchus mykiss). Includes all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive;

(15) Middle Columbia River steelhead (Oncorhynchus mykiss). Includes all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin.

(16) Puget sound chinook salmon (Oncorhynchus tshawytscha). Includes all naturally spawned populations of chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington.

(17) Lower Columbia River chinook salmon (Oncorhynchus tshawytscha). Includes all naturally spawned populations of chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run chinook salmon in the Clackamas River.

(18) Upper Willamette River chinook salmon (Oncorhynchus tshawytscha). Includes all naturally spawned populations of spring-run chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon.

(19) Ozette Lake sockeye salmon (Oncorhynchus nerka). Includes all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington.

(20) Central Valley spring-run chinook salmon (Oncorhynchus tshawytscha). Includes all naturally spawned populations of spring-run chinook salmon in the Sacramento River Basin, and its tributaries, California.

(21) California coastal chinook salmon (Oncorhynchus tshawytscha). Includes all naturally spawned populations of chinook salmon from Redwood Creek (Humboldt County, California) through the Russian River (Sonoma County, California).

(22) Northern California steelhead (Oncorhynchus mykiss). Includes all naturally spawned populations of steelhead (and their progeny) in coastal river basins ranging from Redwood Creek in Humboldt County, California to the Gualala River, inclusive, in Mendocino County, California.

(b) Marine plants. Johnson's seagrass (Halophila johnsonii).

(c) Marine mammals. Guadalupe fur seal (Arctocephalus townsendi); Steller sea lion (Eumetopias jubatus), eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude.

(d) Sea turtles. Green turtle (Chelonia mydas) except for those populations listed under §224.101(c) of this chapter; Loggerhead turtle (Caretta caretta); Olive ridley turtle (Lepidochelys olivacea) except for those populations listed under §224.101(c) of this chapter.

NOTE TO §223.201(D): Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.
Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

§ 223.201 Guadalupe fur seal.

(a) Prohibitions. The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Guadalupe fur seal except as provided in paragraph (b) of this section.

(b) Exceptions. (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with the subject to the provisions of part 222 subpart C—General Permit Procedures.

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a stranded Guadalupe fur seal without a permit if such taking:

(i) Is accomplished in a humane manner;

(ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen;

(iii) Includes steps designed to ensure the return of the animal to its natural habitat, if feasible; and

(iv) Is reported within 30 days to the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

(3) Any animal or specimen taken under paragraph (b)(2) of this section may only be retained, disposed of, or salvaged in accordance with directions from the Director, Southwest Region.


§ 223.202 Steller sea lion.

(a) General prohibitions. The prohibitions of section 9 of the Act (16 U.S.C. 1538) and the following regulatory provisions shall apply to the eastern population of Steller sea lions:

(1) No discharge of firearms. Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 190 yards (91.4 meters) of a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) No approach in buffer areas. Except as provided in paragraph (b) of this section:

(i) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in Table 1 to § 223.202—Listed Steller Sea Lion Rookery Sites; and

(ii) No person may approach on land not privately owned within one-half statutory miles (0.8 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater, except on Marmot Island; and

(iii) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

(3) Listed sea lion rookery sites. Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

Table 1 to § 223.202—Listed Steller Sea Lion Rookery Sites

<table>
<thead>
<tr>
<th>Island</th>
<th>From</th>
<th>To</th>
<th>NOAA chart</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lat.</td>
<td>Long.</td>
<td>Lat.</td>
<td>Long.</td>
<td></td>
</tr>
<tr>
<td>1. Outer I.</td>
<td>59°20.5 N</td>
<td>152°23.0 W</td>
<td>59°21.0 N</td>
<td>150°24.5 W</td>
</tr>
<tr>
<td>2. Sugarloaf I.</td>
<td>58°53.0 N</td>
<td>152°02.0 W</td>
<td>58°10.0 N</td>
<td>151°51.0 W</td>
</tr>
<tr>
<td>3. Marmot I.</td>
<td>55°46.5 N</td>
<td>155°39.5 W</td>
<td>55°46.5 N</td>
<td>155°43.0 W</td>
</tr>
<tr>
<td>4. Chirikof I.</td>
<td>56°00.5 N</td>
<td>156°41.5 W</td>
<td>56°00.5 N</td>
<td>156°42.0 W</td>
</tr>
<tr>
<td>5. Chowet I.</td>
<td>55°03.5 N</td>
<td>159°18.5 W</td>
<td>54°45.5 N</td>
<td>159°33.5 W</td>
</tr>
<tr>
<td>6. Atkins I.</td>
<td>54°47.5 N</td>
<td>159°31.0 W</td>
<td>54°46.0 N</td>
<td>161°46.0 W</td>
</tr>
<tr>
<td>7. Chernabura I.</td>
<td>54°46.0 N</td>
<td>161°46.0 W</td>
<td>54°43.0 N</td>
<td>162°26.5 W</td>
</tr>
<tr>
<td>8. Pinnacle Rock</td>
<td>54°43.0 N</td>
<td>162°26.5 W</td>
<td>54°42.0 N</td>
<td>162°26.5 W</td>
</tr>
<tr>
<td>9. Clubbing Rks (N)</td>
<td>54°28.0 N</td>
<td>163°12.0 W</td>
<td>54°28.0 N</td>
<td>163°12.0 W</td>
</tr>
<tr>
<td>10. Sea Lion Rks</td>
<td>54°28.0 N</td>
<td>163°12.0 W</td>
<td>54°28.0 N</td>
<td>163°12.0 W</td>
</tr>
<tr>
<td>Island</td>
<td>From Lat.</td>
<td>From Long.</td>
<td>To Lat.</td>
<td>To Long.</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
<td>------------</td>
<td>---------</td>
<td>----------</td>
</tr>
<tr>
<td>11. Ugamak I.</td>
<td>54°14.0 N</td>
<td>164°48.0 W</td>
<td>54°13.0 N</td>
<td>164°48.0 W</td>
</tr>
<tr>
<td>12. Akutan I.</td>
<td>54°18.0 N</td>
<td>165°32.5 W</td>
<td>54°18.0 N</td>
<td>165°31.5 W</td>
</tr>
<tr>
<td>13. Bogoslof I.</td>
<td>54°03.5 N</td>
<td>168°00.0 W</td>
<td>54°05.5 N</td>
<td>166°05.0 W</td>
</tr>
<tr>
<td>14. Ophul I.</td>
<td>53°56.0 N</td>
<td>168°02.0 W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Adak I.</td>
<td>53°55.0 N</td>
<td>169°10.0 W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Unasek I.</td>
<td>53°42.0 N</td>
<td>170°38.5 W</td>
<td>52°41.0 N</td>
<td>170°34.5 W</td>
</tr>
<tr>
<td>17. Seguam I.</td>
<td>52°21.0 N</td>
<td>172°35.0 W</td>
<td>52°21.0 N</td>
<td>172°33.0 W</td>
</tr>
<tr>
<td>18. Aguat I.</td>
<td>52°06.5 N</td>
<td>172°54.0 W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19. Ayugadak I.</td>
<td>52°10.0 N</td>
<td>173°31.5 W</td>
<td>52°10.5 N</td>
<td>173°29.0 W</td>
</tr>
<tr>
<td>20. Kiska I.</td>
<td>51°36.5 N</td>
<td>178°59.0 W</td>
<td>51°38.0 N</td>
<td>176°59.5 W</td>
</tr>
<tr>
<td>21. Tag I.</td>
<td>51°29.0 N</td>
<td>178°20.5 W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22. Buldir I.</td>
<td>51°33.5 N</td>
<td>178°34.5 W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23. Tag I.</td>
<td>51°29.0 N</td>
<td>178°57.0 W</td>
<td>51°18.5 N</td>
<td>178°59.5 W</td>
</tr>
<tr>
<td>24. Walrus I.</td>
<td>51°58.5 N</td>
<td>179°45.5 E</td>
<td>51°57.0 N</td>
<td>179°46.0 E</td>
</tr>
<tr>
<td>25. Semisopochnoi</td>
<td>52°01.5 N</td>
<td>179°37.5 E</td>
<td>52°01.5 N</td>
<td>179°39.0 E</td>
</tr>
<tr>
<td>26. Arakia I.</td>
<td>51°22.5 N</td>
<td>179°28.0 E</td>
<td>51°21.5 N</td>
<td>179°25.0 E</td>
</tr>
<tr>
<td>27. Arakia I.</td>
<td>51°32.5 N</td>
<td>178°49.5 E</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28. Kiska I.</td>
<td>51°57.5 N</td>
<td>177°21.0 E</td>
<td>51°56.5 N</td>
<td>177°20.0 E</td>
</tr>
<tr>
<td>29. Walrus I.</td>
<td>51°52.5 N</td>
<td>177°13.0 E</td>
<td>51°53.5 N</td>
<td>177°12.0 E</td>
</tr>
<tr>
<td>30. Buldir I.</td>
<td>52°20.5 N</td>
<td>175°57.0 E</td>
<td>52°23.5 N</td>
<td>175°51.0 E</td>
</tr>
<tr>
<td>32. Attu I.</td>
<td>52°23.5 N</td>
<td>173°43.5 E</td>
<td>52°22.0 N</td>
<td>173°41.0 E</td>
</tr>
<tr>
<td>33. Attu I.</td>
<td>52°54.0 N</td>
<td>172°28.5 E</td>
<td>52°57.0 N</td>
<td>172°31.5 E</td>
</tr>
</tbody>
</table>

1 Each site extends 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; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.
§223.203 Commercial Fishing Operations. The incidental mortality and serious injury of endangered and threatened Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(b) Exceptions—(1) Permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of part 222, subpart C—General Permit Procedures.

(2) Official activities. The taking of Steller sea lions must be reported within 30 days to the Regional Administrator, Alaska Region. Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(i) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(ii) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(3) Subsistence takings by Alaska natives. Paragraph (a) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(4) Emergency situations. Paragraph (a)(2) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(5) Exemptions. Paragraph (a)(2) of this section does not apply to any activity authorized by a prior written exemption from the Director, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the Federal Register. An exemption may be granted only if the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(6) Navigational transit. Paragraph (a)(2) of this section does not prohibit a vessel in transit from passing through a strait, narrow, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrow, or passageway does not indicate that the area is safe for navigation. The listed straits, narrow, or passageways include the following:

<table>
<thead>
<tr>
<th>Rookery</th>
<th>Straits, narrow, or passageway</th>
</tr>
</thead>
<tbody>
<tr>
<td>Akutan Island</td>
<td>Akutan Pass between Cape Morgan and Unalga Island.</td>
</tr>
<tr>
<td>Outer Island ...</td>
<td>Wildcat Pass between Rabbit and Ragged Islands.</td>
</tr>
</tbody>
</table>

(c) Penalties. (1) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(2) Any vessel used in violation of this section or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.


§223.203 Anadromous fish.

(a) Prohibitions. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to the threatened species of salmonids listed in §223.102(a)(1) through (a)(10), and (a)(12) through (a)(19), except as provided in paragraph (b) of this section and §223.206(a).

(b) Limits on the prohibitions. (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter II implementing such exceptions, also apply to the threatened species of salmonids listed in §223.102(a)(1)
through (a)(10), and (a)(12) through (a)(19).

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than October 10, 2000. The prohibitions of paragraph (a) of this section apply to these activities upon the AA’s rejection of the application as insufficient, upon issuance or denial of a permit, or March 7, 2001, whichever occurs earliest.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102 (a)(4) through (a)(10), and (a)(12) through (a)(19) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,
(ii) Dispose of a dead salmonid, or
(iii) Salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiable unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU.

(B) Utilize the concepts of “viable” and “critical” salmonid population thresholds, consistent with the concepts contained in the technical document entitled “Viable Salmonid Populations (NMFS, 2000b).” The VSP paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or
above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population’s achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population’s achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for com mingled naturally spawned populations.

(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS’ letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the FEDERAL REGISTER announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS’ approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its
intention to withdraw the limit for activities associated with that FMEP. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS Northwest Region’s website (www.nwr.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species of steelhead listed in §223.102 (a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to fisheries managed solely by the states of Oregon, Washington, Idaho, and California until January 8, 2001.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/ or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program’s success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in the technical document entitled “Viable Salmonid Populations” (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Taking into account health, abundances, and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species’ conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS such for secondary purposes, as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program’s genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For programs whose purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock, to
maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For Federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS’ letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the Federal Register announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS’ approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, the NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the Federal Register announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions, like all other activity not within a limit, would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region’s website (www.nwr.noaa.gov).

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102 (a)(7), (a)(8), (a)(10), and (a)(12) through (a)(19) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of United States v. Washington or United States v. Oregon, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR 223.209 and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within the parameters set forth in United States v. Washington or United States v. Oregon.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in §223.203(b)(4), or on how any hatchery and genetic management plan addresses the criteria in §223.203(b)(5).

(iv) The Secretary shall publish notice in the Federal Register of any determination whether or not a joint plan, will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.
On a regular basis, NMFS will evaluate the effectiveness of the joint plan in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the plan is not effective, then NMFS will identify to the jurisdiction ways in which the joint plan needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the Federal Register announcing its intention to withdraw the limit on activities associated with that joint plan. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that joint plan as to all other activity not within a limit.

The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to scientific research activities provided:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the ODFW, WDFW (Agencies), IDFG, or CDFG (Agencies), or as a part of a monitoring and research program overseen by or coordinated with that Agency.

(ii) The Agencies provide for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) The Agencies annually provide to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by agency personnel, or are in accord with a permit issued by the Agency.

(v) The Agencies provide NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS' "Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act" (NMFS, 2000a).

(vii) NMFS' approval of a research program shall be a written approval by NMFS Northwest or Southwest Regional Administrator.

The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a)(5) through (a)(10), and (a)(12), through (a)(19) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of Washington, Oregon, Idaho, or California (State) to be consistent with the state's watershed conservation plan guidelines.

(ii) The State's watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species and populations.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.
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(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.

(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of Watershed Conservation Plans to ensure adherence to approved watershed conservation plan guidelines.

(iv) “Habitat restoration activity” is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. “Primary purpose” means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving watershed conservation plan guidelines under paragraph (b)(8)(ii) of this section, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of no less than 30 days.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS’ engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region. Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS’ Southwest Region “Fish Screening Criteria for Anadromous Salmonids, January 1997” or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case by case basis, NMFS or an Authorized Officer will review and approve a juvenile fish screen design and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance activity conducted by ODOT employees or agents that complies with ODOT’s Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999); or by employees or agents of a state, county, city or port that complies with a program substantially similar to that contained in the ODOT Guide that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in subparagraph (ii) following. NMFS’ approval of state, city, county, or port programs that are
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equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. Any jurisdiction desiring its routine road maintenance activities to be within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(ii) NMFS finds the routine road maintenance activities of any state, city, county, or port to be consistent with the conservation of listed salmonids’ habitat when it contributes, as does the ODOT Guide, to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than one year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iii) Prior to implementing any changes to a program within this limit the jurisdiction provides NMFS a copy of the proposed change for review and approval as within this limit.

(iv) Prior to approving any state, city, county, or port program as within this limit, or approving any substantive change in a program within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activities within the City of Portland, Oregon Parks and Recreation Department’s (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Round Up, Rodeo, Garlon 3A, Surfactant LI-700, Napropamide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department’s Pest Management Policy, including the Waterways Pest Management Policy, updated December 1, 1999.

(iii) Any chemical use within a 25 ft. (7.5 m) buffer complies with the buffer application constraints contained in PP&R’s Waterways Pest Management Policy (update December 1, 1999).

(iv) Prior to implementing any changes to this limit, the PP&R provides NMFS with a copy of the proposed change for review and approval as within this limit.
(v) Prior to approving any substantive change in a program within this limit, NMFS will publish notification in the Federal Register announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(vi) NMFS’ approval of amendments shall be a written approval by NMFS Northwest Regional Administrator.

(vii) NMFS finds the PP&R Pest Management Program activities to be consistent with the conservation of listed salmonids’ habitat by contributing to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of a watershed’s natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate the effectiveness of an approved program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the Federal Register announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of listed species; or within the jurisdiction of the Metro regional government in Oregon and pursuant to ordinances that Metro has found comply with its Urban Growth Management Functional Plan (Functional Plan) following a determination by NMFS that the Functional Plan is adequately protective. NMFS approval or determinations about any MRCI development ordinances or plans, including the Functional Plan, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve listed salmonids by maintaining and restoring properly functioning habitat conditions:

(A) MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to PFC due to MRCI
development impacts to riparian management areas.

(D) MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimize impacts through choice of mode, sizing, and placement.

(E) MRCI development ordinance or plan adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.

(F) MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of listed salmonids’ habitat when it contributes to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed’s habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as within this limit, or approving any substantive change in
§ 223.203 an ordinance or plan within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(13) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102 (a)(12), (a)(13), (a)(16), (a)(17), and (a)(19) do not apply to non-Federal forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations adopted and implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies.

(ii) All non-regulatory elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides, or fungicides are not included within this limit.

(iv) Actions taken under alternative plans are included in this limit provided that the Washington Department of Natural Resources (WDNR) finds that the alternate plans protect physical and biological processes at least as well as the state forest practices rules and provided that NMFS, or any resource agency or tribe NMFS designates, has the opportunity to review the plan at every stage of the development and implementation. A plan may be excluded from this limit if, after such review, WDNR determines that the plan is not likely to adequately protect listed salmon.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the Report and regulations for public review and comment.

(vi) NMFS finds the activities to be consistent with the conservation of listed salmonids’ habitat by contributing to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed’s natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Programs must meet this biological standard in order for NMFS to find they qualify for a habitat-related limit. NMFS uses the best available science to make these determinations. NMFS may review and revise previous findings as new scientific information becomes available. NMFS will evaluate the effectiveness of the program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. If the program is not adequate, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with the program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) take prohibitions.

(vii) NMFS approval of regulations shall be a written approval by NMFS Northwest Regional Administrator.

(c) Affirmative defense. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in §223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19), any person claiming the benefit of any limit listed in paragraph (b) of this section or
§ 223.204 Exceptions to prohibitions relating to anadromous fish.

(a) The following exceptions to the prohibitions of §223.203(a) of this part apply to the Southern Oregon/Northern California Coast (SONCC) coho salmon.

(1) Take of SONCC coho salmon within 3 miles (approximately 5 km) of the coast, and in the bay, estuarine or freshwater fisheries regulated under the sole authority of the State of Oregon is not prohibited, if the take results from a fisheries harvest program conducted in accordance with the Oregon Coastal Salmon Restoration Initiative of March 1997 (OCSRI). NMFS must have issued a written concurrence that the fisheries regulations are consistent with the OCSRI, using information provided through the April 1997 Memorandum of Agreement (MOA) between the State of Oregon and NMFS.

(2) Incidental take of SONCC coho salmon in ocean fisheries within 3 miles (approximately 5 km) of the coast that are regulated under the sole authority of the State of California is not prohibited, provided that the ocean salmon fishing regulations adopted by the California Fish and Game Commission and CDFG for recreational and commercial fisheries within 3 miles (approximately 5 km) of the coast are consistent with the Pacific Fishery Management Council’s Fishery Management Plan for Ocean Salmon Fisheries and the annual ocean salmon fishing regulations issued by the Secretary of Commerce for the Federal EEZ.

(3) Take of SONCC coho salmon in a hatchery program regulated under the sole authority of the State of Oregon is not prohibited, if the take results from a hatchery program conducted in accordance with the OCSRI, and the take is counted against the total allocation of harvest-related mortality as specified in the OCSRI. NMFS must have issued a written concurrence stating that the hatchery program is consistent with the OCSRI including the hatchery and genetic management plan adopted pursuant to the OCSRI, using information provided through the MOA.

(4) Take of SONCC coho salmon in fisheries research and monitoring activities conducted in California and Oregon is not prohibited provided that:

(i) Research and monitoring involving directed take of coho salmon is conducted by CDFG personnel (in California) and ODFW personnel (in Oregon);

(ii) The CDFG and ODFW, respectively, provide NMFS with a list of all research and monitoring activities involving coho salmon directed take planned for the coming year for NMFS’ review and approval. This report shall include an estimate of the total directed take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact;

(iii) The CDFG and ODFW, respectively, provide NMFS annually with the results of research and monitoring studies directed at SONCC coho salmon, including a report of the directed take resulting from the studies;

(iv) The CDFG and ODFW, provide NMFS annually with a list of all research and monitoring studies permitted that may allow incidental take of listed coho salmon during the coming year and report the level of incidental take of listed coho salmon from the previous year’s research and monitoring activities, for NMFS’ review and approval.
§ 223.205 Sea turtles.

(a) The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened species of sea turtle, except as provided in §223.206.

(b) Except as provided in §223.206, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of §223.206(d);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board a vessel, except if that vessel is in compliance with all applicable provisions of §223.206(d);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, §223.206(d)(3) or (d)(4);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in §223.206(d)(1);

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of §223.206(d)(1);

(7) Fail to comply immediately, in the manner specified at §600.730 (b) through (d) of this Title, with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has

(v) The research and monitoring activities do not include the use of electrofishing in any body of water known or suspected to contain coho salmon.

(5) Incidental take of the SONCC coho salmon in Oregon resulting from a habitat restoration activity is not prohibited, provided that:

(i) The activity is conducted pursuant to a watershed action or restoration plan that has been affirmed by the state in writing as consistent with NMFS’ approved state watershed plan guidelines set forth in §222.307(c) of this chapter. NMFS shall also concur in writing that the plan is consistent with the state watershed plan guidelines; or

(ii) Until a watershed action or restoration plan is approved by both Oregon and NMFS as described in paragraph (a)(5)(i) of this section, or until August 18, 1999, whichever occurs first, the ODFW has made a written finding that the activity is consistent with state restoration activity guidelines that NMFS has agreed, in writing, meet the standards set forth in §222.307(c) of this chapter.

(6) Incidental take of the SONCC coho salmon in California resulting from a habitat restoration activity, as defined in paragraph (a)(6)(iii) of this section, is not prohibited, provided that California has a program in effect that NMFS finds will assure technically supported watershed assessments and coordinated long-term monitoring strategies for watershed protection plans and activities and:

(i) The activity is conducted pursuant to a watershed protection plan that CDFG has affirmed, in writing, is consistent with NMFS’ approved state watershed plan guidelines set forth in §222.307(c) of this chapter for California’s Watershed Protection Program. NMFS must concur, in writing, that the plan is consistent with those guidelines; or

(ii) Until a watershed protection or restoration plan is certified by the State of California and NMFS as described in paragraph (a)(6)(i) of this section, or until August 18, 1999, whichever occurs first, when NMFS has made a written finding that the activity is consistent with State of California conservation guidelines previously found to meet the standards set forth in §222.307(c) of this chapter by NMFS.

[64 FR 14069, Mar. 23, 1999]
an opportunity to inspect same, or in contravention of directions from the officer;

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(12) Resist a lawful arrest for an act prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED; or

(15) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(c) In connection with any action alleging a violation of this section, any person claiming the benefit of any exemption, exception, or permit under this subpart B has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of §223.207 (c) or (d) has the burden of proving such claim.

[64 FR 14069, Mar. 23, 1999]

§223.206 Exceptions to prohibitions relating to sea turtles.

(a) Permits—(1) Scientific research, education, zoological exhibition, or species enhancement permits. The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under §223.205(a) for scientific or educational purposes, for zoological exhibition, or to enhance the propagation or survival of threatened species of sea turtles, in accordance with and subject to the conditions of part 222, subpart C—General Permit Procedures.

(2) Incidental-take permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under §223.205(a) in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the implementing regulations in part 222 of this chapter. Such permits may be issued for the incidental taking of threatened and endangered species of sea turtles.

(b) Exception for injured, dead, or stranded specimens. If any member of any threatened species of sea turtle is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or salvage a dead specimen which may be useful for scientific study. Whenever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator and shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the specimen(s) involved;

(3) Date and location of disposal;

(4) Circumstances requiring the action;

(5) Method of disposal;

(6) Disposition of the specimen(s), including, where the specimen(s) has
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been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and

(7) Such other information as the Assistant Administrator may require.

(c) Exception for research or conservation. Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a state fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at the Assistant Administrator’s discretion.

(d) Exception for incidental taking. The prohibitions against taking in § 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(5) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

(1) Handling and resuscitation requirements. (i) Any specimen taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by:

(1) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot; or

(2) Placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period of 1 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to 24, if possible) must be returned to the water in the same manner.

(ii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) Gear requirements—(1) TED requirement for shrimp trawlers. Any shrimp trawler that is in the Atlantic Area or Gulf Area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler. Exceptions to the TED requirement for shrimp trawlers are provided in paragraph (d)(2)(ii) of this section.

(ii) Exemptions from the TED requirement—(A) Alternative tow-time restrictions. A shrimp trawler is exempt from the TED requirements of paragraph (d)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (d)(3)(i) of this section and if it:

(1) Has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the net aboard);

(2) Is a bait shrimper that retains all live shrimp on board in a container with a circulating seawater system, if
it does not possess more than 32 pounds (14.5 kg) of dead shrimp on board, and if it has on board a valid original state bait-shrimp license (if in a state that requires such a license);

(3) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing; and

(4) Is in an area during a period for which tow-time restrictions apply under paragraphs (d)(3) (ii) or (iii) of this section, if it complies with all applicable provisions imposed under those paragraphs.

(B) Exempted gear or activities. The following fishing gear or activities are exempted from the TED requirements of paragraph (d)(2)(i) of this section:

(1) A single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net;

(2) A beam or roller trawl, if the frame is outfitted with rigid vertical bars, and if none of the spaces between the bars, or between the bars and the frame, exceeds 4 inches (10.2 cm); and

(3) A shrimp trawler fishing for, or possessing, royal red shrimp, if royal red shrimp constitutes at least 90 percent (by weight) of all shrimp either found on board, or offloaded from that shrimp trawler.

(iii) Gear requirement—summer flounder trawlers—(A) TED requirement. (1) Any summer flounder trawler in the summer flounder fishery-sea turtle protection area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the summer flounder trawler.

Exceptions to the TED requirement for summer flounder trawlers are provided in paragraph (d)(2)(iii)(B) of this section.

(2) Any approved hard TED or special hard TED installed in a summer flounder trawler must be installed in a TED extension. The TED extension is a cylindrical piece of webbing distinct from the main trawl’s body, wings, codend, and any other net extension(s). The TED extension must be constructed of webbing no larger than 3.5 inch (8.9 cm) stretched mesh. The TED extension must extend at least 24 inches (61.0 cm) but not more than 36 inches (91.4 cm) forward of the leading edge of the TED and aft of the trailing edge of the grid.

(B) Exemptions from the TED requirement. Any summer flounder trawler north of 35°46.1’ N. lat. (Oregon Inlet, NC) from January 15 through March 15 annually is exempt from the TED requirement of paragraph (d)(2)(iii)(A) of this section, unless the Assistant Administrator determines that TED use is necessary to protect sea turtles or ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section.

(C) Monitoring. Summer flounder trawlers must carry onboard a NMFS-approved observer if requested by the Southeast Regional Administrator or the Northeast Regional Administrator. A written notification will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owner or operator of the vessel. Owners and operators must comply with the terms and conditions specified in such written notification. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for enforcement purposes.

(D) Additional sea turtle conservation measures. The Assistant Administrator may impose other such restrictions upon summer flounder trawlers as the Assistant Administrator deems necessary or appropriate to protect sea turtles and ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section. Such measures may include, but are not limited to, a requirement to use TEDs in areas other than summer flounder fishery-sea turtle protection area, a requirement to use limited tow-times, and closure of the fishery.
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(iv) Gear requirement—leatherback conservation zone. From January 1 through June 30 of each year, weekly aerial surveys will be conducted in the leatherback conservation zone by NMFS or state agents, contingent upon weather conditions. If sighting rates of greater than 10 leatherback turtles per 50 nautical miles (92.6 km) of trackline are observed, the aerial surveys of that area will be replicated within 24 hours, or as soon as practicable thereafter. If surveys pursuant to paragraph (d)(2)(iv)(A) of this section indicate a sighting rate within the leatherback conservation zone of greater than 10 leatherback sea turtles per 50 nautical miles (92.6 km) of trackline, NMFS will close an area of the leatherback conservation zone encompassing all, or a portion of, inshore waters and offshore waters 10 nautical miles (18.5 km) seaward of the COLREGS demarcation line, bounded by 1° lat. coinciding with the trackline, within the leatherback conservation zone. This closure will be for a 2-week period. Within such a closed area, fishing by any shrimp trawler required to have a NMFS-approved TED in each net rigged for fishing is prohibited, unless the TED installed is one described at § 223.207(a)(7)(i)(B) or § 223.207(c)(1)(iv)(B), and the owner or operator of the shrimp trawler has notified the Southeast Regional Administrator of his or her intention to fish in that area, in accordance with the procedure provided in paragraph (d)(5) of this section. If requested in writing from the Southeast Regional Administrator, owners and operators of shrimp trawlers in the leatherback conservation zone must carry NMFS-approved observers aboard such vessel(s). A shrimp trawler in the leatherback conservation zone must comply with the terms and conditions specified in such written request, as well as provide information on trawling hours, gear modifications, and turtle captures.

(C) Notification. NMFS will immediately announce specific area closures on the NOAA weather radio channel, in newspapers, and other media. Specific area closures will be effective upon filing for public inspection at the Office of the Federal Register. Owners and operators of shrimp trawl vessels in the leatherback conservation zone are responsible for monitoring the NOAA weather radio channel for closure announcements. Shrimp trawlers may also call the Southeast Regional Office at (813) 579–5312 to receive updated area closure information.

(3) Tow-time restrictions. If tow-time restrictions are utilized pursuant to paragraph (d)(2)(ii), (d)(3)(ii), or (d)(3)(iii) of this section, a shrimp trawler must limit tow times. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water. Tow times may not exceed:

(A) 55 minutes from April 1 through October 31; and

(B) 75 minutes from November 1 through March 31.

(ii) Alternative—special environmental conditions. The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. Tow times may not exceed:

(A) 55 minutes from April 1 through October 31; and

(B) 75 minutes from November 1 through March 31.

(iii) Substitute—ineffectiveness of TEDs. The Assistant Administrator may require compliance with tow-time restrictions, as a substitute for the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that TEDs are ineffective in protecting sea turtles.

(iv) Notice; applicability; conditions. The Assistant Administrator will publish notification concerning any tow-time restriction imposed under paragraph (d)(3)(ii) or (iii) of this section in the Federal Register and will announce it in summary form on channel 16 of the marine VHF radio. A notification of tow-time restrictions will include findings in support of these restrictions as an alternative to, or as substitute for, the TED requirements. The notification will specify the effective dates, the geographic area where
tow-time restrictions apply, and any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance, including, but not limited to, a requirement to carry observers, to register vessels in accordance with procedures at paragraph (d)(5) of this section, or for all shrimp trawlers in the area to synchronize their tow times so that all trawl gear remains out of the water during certain times. A notification withdrawing tow-time restrictions will include findings in support of that action.

(v) Procedures. The Assistant Administrator will consult with the appropriate fishery officials (state or Federal) where the affected shrimp fishery is located in issuing a notification concerning tow-time restrictions. An emergency notification can be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each if the Assistant Administrator finds that the conditions necessitating the imposition of tow-time restrictions continue to exist. The Assistant Administrator may invite comments on such an action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent tow-time restriction through rulemaking.

(4) Limitations on incidental takings during fishing activities—(i) Limitations. The exemption for incidental takings of sea turtles in paragraph (d) of this section does not authorize incidental takings during fishing activities if the takings:

(A) Would violate the restrictions, terms, or conditions of an incidental take statement or biological opinion;

(B) Would violate the restrictions, terms, or conditions of an incidental take permit; or

(C) May be likely to jeopardize the continued existence of a species listed under the Act.

(ii) Determination; restrictions on fishing activities. The Assistant Administrator may issue a determination that incidental takings during fishing activities are unauthorized. Pursuant thereto, the Assistant Administrator may restrict fishing activities in order to conserve a species listed under the Act, including, but not limited to, restrictions on the fishing activities of vessels subject to paragraph (d)(2) of this section. The Assistant Administrator will take such action if the Assistant Administrator determines that restrictions are necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator may withdraw or modify a determination concerning unauthorized takings or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted.

(iii) Notice; applicability; conditions. The Assistant Administrator will publish a notification of a determination concerning unauthorized takings or a notification concerning the restriction of fishing activities in the FEDERAL REGISTER. The Assistant Administrator will provide as much advance notice as possible, consistent with the requirements of the Act, and will announce the notification in summary form on channel 16 of the marine VHF radio. Notification of a determination concerning unauthorized takings will include findings in support of that determination; specify the fishery, including the target species and gear used by the fishery, the area, and the times, for which incidental takings are not authorized; and include such other conditions and restrictions as the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Notification of a restriction on fishing activities will include findings in support of the restriction, will specify the time and area where the restriction is applicable, and will specify any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Such conditions and restrictions may include, but are not limited to, limitations on the types of fishing gear that may be used, tow-time restrictions, alteration or extension of the periods of time during which particular tow-time requirements apply, requirements to
§223.207 Approved TEDs.

Any netting, webbing, or mesh that may be measured to determine compliance with this section is subject to measurement, regardless of whether it is wet or dry. Any such measurement will be of the stretched mesh size.

(a) Hard TEDs. Hard TEDs are TEDs with rigid deflector grids and are categorized as “hooped hard TEDs,” such as the NMFS and Cameron TEDs (Figures 1 & 2 to this part), or “single-grid hard TEDs,” such as the Matagorda and Georgia TEDs (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

(1) Construction materials. A hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(i) Solid steel rod with a minimum outside diameter of ¼ inch (0.64 cm); (ii) Fiberglass or aluminum rod with a minimum outside diameter of ½ inch (1.27 cm); or (iii) Steel or aluminum tubing with a minimum outside diameter of ½ inch.

(6) Restrictions applicable to the California/Oregon drift gillnet fishery—

(i) Pacific leatherback conservation area. No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed:

(A) Point Sur (36°18.5' N to 34°27' N 123°35' W);
(B) 34°27' N 123°35' W to 34°27' N 129° W;
(C) 34°27' N 129° W to 45° N 129° W;
(D) 45° N 129° W to the point 45° N intersects the Oregon coast.

(ii) [Reserved]
(1.27 cm) and a minimum wall thickness of \(\frac{1}{8}\) inch (0.32 cm) (also known as schedule 40 tubing).

(2) Method of attachment. A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.

(3) Angle of deflector bars. (i) The angle of the deflector bars must be between \(30^\circ\) and \(55^\circ\) from the normal, horizontal flow through the interior of the trawl, except as provided in paragraph (a)(3)(ii) of this section.

(ii) For any shrimp trawler fishing in the Gulf SFSTCA or the Atlantic SFSTCA, a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, the angle of the deflector bars from the normal, horizontal flow through the interior of the trawl, at any point, must not exceed \(55^\circ\), and:

(A) If the deflector bars that run from top to bottom are attached to the bottom frame of the TED, the angle of the imaginary lines connecting the bottom frame of the TED to the bottom end of each deflector bar which runs from top to bottom must not exceed \(45^\circ\) (Figures 14a and 14b to this part);

(B) If the deflector bars that run from top to bottom are not attached to the bottom frame of the TED, the angle of the imaginary lines connecting the bottom frame of the TED to the bottom end of each deflector bar which runs from top to bottom must not exceed \(45^\circ\) (Figure 15 to this part).

(4) Space between bars. The space between deflector bars and between the deflector bars and the frame must not exceed 4 inches (10.2 cm).

(5) Direction of bars. The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED.

(6) Position of escape opening. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in its deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. For a single-grid TED, the escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction.

(7) Size of escape opening. (i) Hooped hard TED. On a hooped hard TED, the escape opening must not be smaller than 25 inches by 25 inches (63.5 cm by 63.5 cm) in the Gulf Area, or 30 inches by 30 inches (76.2 cm by 76.2 cm) in the Atlantic Area. A door frame may not be used over the escape opening; however, a webbing flap may be used as provided in paragraph (e)(4)(iv)(C) of this section.

(ii) Single-grid hard TED. (A) Escape opening for standard single-grid hard TED. On a single-grid hard TED, the cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. (Figure 13 to this part illustrates the dimensions of this cut.) The resulting escape opening in the net webbing must measure at least 32 inches (81.3 cm) in horizontal taut length and, simultaneously, 10 inches (25.4 cm) in vertical taut height in the Gulf Area; or 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height in the Atlantic Area. The vertical measurement must be taken at the midpoint of the horizontal measurement.

(B) Escape opening for leatherback turtles. (A) Standard leatherback opening. A single-grid hard TED escape opening shall be enlarged to allow leatherback turtles to escape by cutting an exit hole in the extension forward of the TED frame 26 inches (66 cm) deep, on each side, by 83 inches (211 cm) across (Figures 12a and 12b to this part). Excess webbing is removed by cutting across \(\frac{1}{2}\) mesh forward of the TED frame. The exit hole cover is made by cutting a 133-inch (388 cm) by 58-inch (148 cm) piece of webbing no smaller than \(1\frac{1}{2}\) inch (4 cm) stretch mesh and no larger than \(1 \frac{1}{2}\) inch (4.2 cm) stretch mesh. The 133-inch (338 cm) edge of the cover is attached to the forward edge of the opening (83-inch (211 cm) edge) with a sewing sequence of 3:2. The cover must overlap 5 inches (13 cm) of the exit hole on each side. The side of the
cover is attached, maintaining the 5-inch (13 cm) overlap, to the side of the opening by sewing 28 inches (71 cm) of the cover to 26 inches (66 cm) of the opening forward of the TED frame and by sewing 15 inches (38 cm) of the extension behind the TED frame. The circumference of the exit opening must be 142 inches (361 cm) when stretched. If an accelerator funnel is used with a single-grid hard TED, modified as above, it must have a minimum circumference of 142 inches (361 cm).

(2) Double cover flap TED opening. A single-grid hard TED escape opening shall be enlarged to allow leatherback turtles to escape by cutting an exit hole in the extension forward of the TED frame 20 inches (51 cm) deep, on each side, by 56 inches (142 cm) across. Excess webbing is removed by cutting across ½ mesh forward of the TED frame. The exit hole cover is made by cutting two equal size rectangular panels of webbing with mesh sizes no smaller than 1½ inch (4 cm) stretch mesh and no larger than 1 ¾ inch (4.2 cm) stretch mesh. Each panel must be no less than 56 inches (147 cm) wide. The 56-inch (147 cm) edges of each panel are attached to the forward edge of the opening (56-inch (142 cm) edge) with a sewing sequence of 3:2. When both panels are attached, they may overlap each other by no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The panels may not overlap the escape hole cut by more than 3 meshes on either side. The outer edges of the panels may be attached in the same row of meshes forward and aft. The end of each panel may not extend more than 6 inches (15 cm) past the posterior edge of the grid. Accelerator funnels and chafing webbing may not be used with this TED. (Figure 16 of this part illustrates the escape opening and flap dimensions for the double cover flap TED.)

(8) Size of hoop or grid—(i) Hooped hard TED. (A) An oval front hoop on a hard TED must have an inside horizontal measurement of at least 32 inches (81.3 cm) and an inside vertical measurement of at least 20 inches (50.8 cm) in the Gulf Area, or an inside horizontal measurement of at least 35 inches (88.9 cm) and an inside vertical measurement of at least 30 inches (76.2 cm) in the Atlantic Area.

(B) A circular front hoop on a hard TED must have an inside diameter of at least 32 inches (81.3 cm) in the Gulf Area or 35 inches (88.9 cm) in the Atlantic Area.

(ii) Single-grid hard TED. A single-grid hard TED must have an inside horizontal and vertical measurement of at least 28 inches (71.1 cm) in the Gulf Area or 30 inches (76.2 cm) in the Atlantic Area. The required inside measurements must be at the mid-point of the deflector grid.

(9) Flotation. Floats must be attached to the top one-half of all hard TEDs with bottom escape openings. The floats may be attached either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface of the TED. Floats must be attached with heavy twine or rope. Floats must be constructed of aluminum, hard plastic, expanded polyvinyl chloride, or expanded ethylene vinyl acetate unless otherwise specified. The requirements of this paragraph may be satisfied by compliance with either the dimension requirements of paragraph (a)(9)(i) of this section, or the buoyancy requirements of paragraph (a)(9)(ii) of this section, or the buoyancy-dimension requirements of paragraph (a)(9)(iii) of this section. If roller gear is used pursuant to paragraph (d)(5) of this section, the roller gear must be included in the circumference measurement of the TED or the total weight of the TED.

(1) Float dimension requirements. (A) For hard TEDs with a circumference of 120 inches (304.8 cm) or more, a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or two expanded polyvinyl chloride or expanded ethylene vinyl acetate floats, each no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(B) For hard TEDs with a circumference of less than 120 inches (304.8 cm), a minimum of either one round, aluminum or hard plastic float, no
smaller than 9.8 inches (25.0 cm) in diameter, or one expanded polyvinyl chloride or expanded ethylene vinyl acetate float, no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(ii) Float buoyancy requirements. Floats of any size and in any combination must be attached such that the combined buoyancy of the floats, as marked on the floats, equals or exceeds the weight of the hard TED, as marked on the TED. The buoyancy of the floats and the weight of the TED must be clearly marked on the floats and the TED as follows:

(A) Float buoyancy markings. Markings on floats must be made in clearly legible raised or recessed lettering by the original manufacturer. The marking must identify the buoyancy of the float in water, expressed in grams or kilograms, and include the metric unit of measure. The marking may additionally include the buoyancy in English units. The marking must identify the nominal buoyancy for the manufactured float.

(B) TED weight markings. The marking must be made by the original TED manufacturer and must be permanent and clearly legible. The marking must identify the in-air, dry weight of the TED, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the weight in English units. The marked weight must represent the actual weight of the individual TED as manufactured. Previously manufactured TEDs may be marked upon return to the original manufacturer. Where a TED is comprised of multiple detachable components, the weight of each component must be separately marked.

(iii) Buoyancy-dimension requirements. Floats of any size and in any combination, provided that they are marked pursuant to paragraph (a)(9)(ii)(A) of this section, must be attached such that the combined buoyancy of the floats equals or exceeds the following values:

(A) For floats constructed of aluminum or hard plastic, regardless of the size of the TED grid, the combined buoyancy must equal or exceed 14 lb (6.4 kg);

(B) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is 120 inches (304.8 cm) or more, the combined buoyancy must equal or exceed 20 lb (9.1 kg); or

(C) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is less than 120 inches (304.8 cm), the combined buoyancy must equal or exceed 10 lb (4.5 kg).

(b) Special Hard TEDs. Special hard TEDs are hard TEDs which do not meet all of the design and construction criteria of the generic standards specified in paragraph (a) of this section. The following special hard TEDs are approved TEDs:

(1) Flounder TED (Figure 10 to this part). The Flounder TED is approved for use only in the Atlantic summer flounder bottom trawl fishery. The Flounder TED is not an approved TED for use by shrimp trawlers. The Flounder TED must be constructed of at least 1\(\frac{1}{4}\) inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least \(\frac{1}{8}\) inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. One or more additional vertical bars running from the bottom bar to the horizontal bar must divide the opening at the bottom into two or more rectangles, each with a maximum height of 10 inches (25.4 cm) and a maximum width of 14\(\frac{1}{2}\) inches (36.8 cm). This TED must comply with paragraphs (a)(2), (a)(3), (a)(6), and (a)(7)(ii) of this section with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, and the
size of the escape opening, except that the deflector bars must be positioned in the net to deflect turtles to the escape opening in the top of the trawl. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED.

(2) Jones TED (Figure 11 to this part). The Jones TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe, and the pipe must have a wall thickness of at least 1/4 inch (0.3 cm). It must be generally oval in shape with a flattened bottom. The deflector bars must be attached to the frame at a 45° angle from the horizontal positioning downward and each bar must be attached at only one end to the frame. The deflector bars must be attached and lie in the same plane as the frame. The space between the ends of the bottom deflector bars and the bottom frame bar must be no more than 3 inches (7.6 cm). The spacing between the bottom three deflector bars on each side must be no greater than 2 1/2 inches (6.4 cm). The spacing between all other deflector bars must not exceed 3 1/2 inches (8.9 cm) and spacing between ends of opposing deflector bars also must not exceed 3 1/2 inches (8.9 cm). This TED must comply with paragraphs (a)(2), (a)(3), (a)(6), (a)(7)(ii), (a)(8)(ii), and (a)(9) of this section with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, the size of the escape opening, the size of the grid, and flotation.

(c) Soft TEDs. Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The following soft TEDs are approved TEDs:

(1) Parker TED. The Parker TED is a soft TED, consisting of a single triangular panel, composed of webbing of two different mesh sizes, that forms a complete barrier inside a trawl and that angles toward an escape opening in the top of the trawl.

(i) Excluder Panel. (Figure 5 to this part) The excluder panel of the Parker TED must be constructed of a single triangular piece of 8-inch (20.3 cm) stretched mesh webbing and two trapezoidal pieces of 4-inch (10.2 cm) stretched mesh webbing. The webbing must consist of number 48 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The leading edge of the 8-inch (20.3-cm) mesh panel must be 36 meshes wide. The 8-inch (20.3-cm) mesh panel must be tapered on each side with all-bar cuts to converge on an apex, such that the length of each side is 36 bars. The leading edges of the 4-inch (10.2-cm) mesh panels must be 8 meshes wide. The edges of the 4-inch (10.2-cm) mesh panels must be cut with all-bar cuts running parallel to each other, such that the length of the inner edge is 72 bars and the length of the outer edge is 89 bars and the resulting fore-and-aft edge is 8 meshes deep. The two 4-inch (10.2-cm) mesh panels must be sewn to the 8-inch (20.3-cm) mesh panel to create a single triangular excluder panel. The 72-bar edge of each 4-inch (10.2-cm) mesh panel must be sewn securely with twine to one of the 36-bar edges of the 8-inch (20.3-cm) mesh panel, tied with knots at each knot of the 4-inch (10.2-cm) webbing and at least two wraps of twine around each bar of 4-inch (10.2-cm) mesh and the adjoining bar of the 8-inch (20.3-cm) mesh. The adjoining fore-and-aft edges of the two 4-inch (10.2-cm) mesh panels must be sewn together evenly.

(ii) Limitations on which trawls may have a Parker TED installed. The Parker TED must not be installed or used in a two-seam trawl with a tongue, nor in a triple-wing trawl (a trawl with a tongue along the headrope and a second tongue along the footrope). The Parker TED may be installed and used in any other trawl if the taper of the body panels of the trawl does not exceed 4h1p and if it can be properly installed in compliance with paragraph (c)(1)(iii) of this section.

(iii) Panel installation—(A) Leading edge attachment. The leading edge of the excluder panel must be attached to the inside of the bottom of the trawl across a straight row of meshes. For a two-seam trawl or a four-seam, tapered-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel, from seam to seam. For a four-seam, straight-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel.
§ 223.207

Every mesh of the leading edge of the excluder panel must be evenly sewn to this row of meshes; meshes may not be laced to the trawl. The row of meshes for attachment to the trawl must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

(A) For a mesh size of 2½ inches (5.7 cm), 152–168 meshes;
(B) For a mesh size of 2½ inches (5.4 cm), 161–178 meshes;
(C) For a mesh size of 2 inches (5.1 cm), 171–189 meshes;
(D) For a mesh size of 1½ inches (4.8 cm), 182–202 meshes;
(E) For a mesh size of 1¼ inches (4.4 cm), 196–216 meshes;
(F) For a mesh size of 1 inch (4.1 cm), 211–233 meshes;
(G) For a mesh size of 1 inch (4 cm), 222–252 meshes;
(H) For a mesh size of 3/8 inch (3.5 cm), 249–275 meshes; and
(I) For a mesh size of 3/8 inch (3.2 cm), 274–302 meshes.

(A) **Apex attachment.** The apex of the triangular excluder panel must be attached to the inside of the top body panel of the trawl at the centerline of the trawl. The distance, measured aft along the centerline of the top body panel from the same row of meshes for attachment of the excluder panel to the bottom body panel of the trawl, to the apex attachment point must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

1. For a mesh size of 2½ inches (5.7 cm), 78–83 meshes;
2. For a mesh size of 2½ inches (5.4 cm), 83–88 meshes;
3. For a mesh size of 2 inches (5.1 cm), 87–93 meshes;
4. For a mesh size of 1½ inches (4.8 cm), 93–99 meshes;
5. For a mesh size of 1¼ inches (4.4 cm), 100–106 meshes;
6. For a mesh size of 1 inch (4.1 cm), 107–114 meshes;
7. For a mesh size of 1 inch (4 cm), 114–124 meshes;
8. For a mesh size of 3/8 inch (3.5 cm), 127–135 meshes; and
9. For a mesh size of 3/8 inch (3.2 cm), 137–146 meshes.

(B) **Longitudinal cut.** A slit at least 56 inches (1.4 m) in taut length must be cut along the centerline of the top body panel of the trawl net immediately forward of the apex of the panel webbing. The slit must not be covered or closed in any manner. All edges and end points of the slit must be reinforced in any way; for example, by attaching additional rope or webbing or by changing the orientation of the webbing.

(C) **Side attachment.** The sides of the excluder panel must be attached evenly to the inside of the trawl from the outside attachment points of the excluder panel’s leading edge to the apex of the excluder panel. Each side must be sewn with the same sewing sequence, and, if the sides of the excluder panel cross rows of bars in the trawl, the crossings must be distributed evenly over the length of the side attachment.

(D) **Leatherback escape opening.** A horizontal cut extending from the attachment of one side of the deflector panel to the trawl to the attachment of the other side of the deflector panel to the trawl must be made in a single row of meshes across the top of the trawl and measure at least 96 inches (244 cm) in taut width. All trawl webbing above the deflector panel between the 96-inch (244-cm) cut and edges of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap must not be larger than the width of the forward edge of the escape opening. The flap must not extend more than 12 inches (30.4 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the top of the trawl but must not be attached farther aft than the row of meshes through the rear point of the escape opening. One row of steel chain not larger than 5/8 inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain must not exceed 96 inches (244 cm). A Parker TED using the escape opening described in this
paragraph meets the requirements of §223.206(d)(2)(iv)(B).

(2) [Reserved]

(d) Allowable modifications to hard TEDs and special hard TEDs. Unless otherwise prohibited in paragraph (b) of this section, only the following modifications may be made to an approved hard TED or an approved special hard TED:

(1) Floats. In addition to floats required pursuant to paragraph (a)(9) of this section, floats may be attached to the top one-half of the TED, either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface at the top of the TED.

(2) Accelerator funnel. An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size not greater than 1\(\frac{1}{8}\) inches (4.1 cm), if it has an inside horizontal opening of at least 39 inches (99.1 cm) when measured in a taut position, if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than 1\(\frac{1}{3}\) of the circumference of the funnel is attached, and if the inside horizontal opening of at least 39 inches (99.1 cm) is maintained. In a bottom-opening TED, only the top 1\(\frac{1}{3}\) of the circumference of the funnel may be attached to the TED. In a top-opening TED, only the bottom 1\(\frac{1}{3}\) of the circumference of the funnel may be attached to the TED.

(3) Webbing flap. A webbing flap may be used to cover the escape opening under the following conditions: No device holds it closed or otherwise restricts the opening; it is constructed of webbing with a stretched mesh size no larger than 1\(\frac{1}{8}\) inches (4.1 cm); it lies on the outside of the trawl; it is attached along its entire forward edge forward of the escape opening; it is not attached on the sides beyond the row of meshes that lies 6 inches (15.2 cm) behind the posterior edge of the grid; and it does not extend more than 24 inches (61.0 cm) beyond the posterior edge of the grid, except for trawlers fishing in the Gulf SFSTCA or Atlantic SFSTCA with a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, in which case the webbing flap must not extend beyond the posterior edge of the grid.

(4) Chafing webbing. A single piece of nylon webbing, with a twine size no smaller than size 36 (2.46 mm in diameter), may be attached outside of the escape opening webbing flap to prevent chafing on bottom opening TEDs. This webbing may be attached along its leading edge only. This webbing may not extend beyond the trailing edge or sides of the existing escape opening webbing flap, and it must not interfere or otherwise restrict the turtle escape opening.

(5) Roller gear. Roller gear may be attached to the bottom of a TED to prevent chafing on the bottom of the TED and the trawl net. When a webbing flap is used in conjunction with roller gear, the webbing flap must be of a length such that no part of the webbing flap can touch or come in contact with any part of the roller gear assembly or the means of attachment of the roller gear assembly to the TED, when the trawl net is in its normal, horizontal position. Roller gear must be constructed according to one of the following design criteria:

(i) A single roller consisting of hard plastic shall be mounted on an axle rod, so that the roller can roll freely about the axle. The maximum diameter of the roller shall be 6 inches (15.2 cm), and the maximum width of the axle rod shall be 12 inches (30.4 cm). The axle rod must be attached to the TED by two support rods. The maximum clearance between the roller and the TED shall not exceed 1 inch (2.5 cm) at the center of the roller. The support rods and axle rod must be made from solid steel or solid aluminum rod no larger than 1\(\frac{1}{2}\) inch (1.28 cm) in diameter. The attachment of the support rods to the TED shall be such that there are no protrusions (lips, sharp edges, burrs, etc.) on the front face of the grid. The axle rod and support rods must lie entirely behind the plane of the face of the TED grid.

(ii) A single roller consisting of hard plastic tubing shall be tightly tied to the back face of the TED grid with rope
or heavy twine passed through the center of the roller tubing. The roller shall lie flush against the TED. The maximum outside diameter of the roller shall be 3½ inches (8.0 cm), the minimum outside diameter of the roller shall be 2 inches (5.1 cm), and the maximum length of the roller shall be 12 inches (30.4 cm). The roller must lie entirely behind the plane of the face of the grid.

(e) Revision of generic design criteria, and approval of TEDs, of allowable modifications of hard TEDs, and of special hard TEDs. (1) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (a) of this section, may approve special hard TEDs in addition to those listed in paragraph (b) of this section, may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (d) of this section, or may approve other TEDs, by regulatory amendment, if, according to a NMFS-approved scientific protocol, the TED demonstrates a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990) and will be used only for testing relating to hard TED designs. Testing under any protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Dr., Miami, FL 33149–1003.

(2) Upon application, the Assistant Administrator may issue permits, subject to such conditions and restrictions as the Assistant Administrator deems appropriate, authorizing public or private experimentation aimed at improving shrimp retention efficiency of existing approved TEDs and at developing additional TEDs, or conducting fishery research, that would otherwise be subject to §223.206(d)(2). Applications should be made to the Southeast Regional Administrator (see §222.102 definition of “Southeast Regional Administrator”).


§ 223.209 Tribal plans.

(a) Limits on the prohibitions. The prohibitions of §223.203(a) of this subpart relating to threatened species of salmonids listed in §223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan’s impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary’s trust responsibilities to tribes.

(b) Consideration of a Tribal Plan. (1) A Tribal Plan may include but is not limited to plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide to the maximum extent practicable technical assistance in examining impacts on listed salmonids and other salmonids as tribes develop Tribal resource management plans that meet the management responsibilities and needs of the tribes. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.

(2) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and
implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the Tribal Plan's terms shall be determined within that Federal Court proceeding.

(3) The Secretary shall seek comment from the public on the Secretary's pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids.

(4) The Secretary shall publish notification in the Federal Register of any determination regarding a Tribal Plan and the basis for that determination.

[65 FR 42485, July 10, 2000]
FIGURE 2 TO PART 223—CAMERON TED


FIGURE 3 TO PART 223—MATAGORDA TED

[52 FR 24260, June 29, 1987. Redesignated at 57 FR 40868, Sept. 8, 1992]
FIGURE 4 TO PART 223—GEORGIA TED

[52 FR 24261, June 29, 1987. Redesignated at 57 FR 40868, Sept. 8, 1992]
The side panels are composed from 4-inch stretched mesh polyethylene or polypropylene webbing with No. 48 twine size (3mm). The main panel is composed of 8-inch stretched mesh polyethylene or polypropylene webbing with No. 48 twine size (3mm).

Figure 5 to Part 223—Net Diagram for the Excluder Panel of the Parker Soft TED
(83 FR 17958, Apr. 13, 1998)
TED flap webbing no larger than 1-5/8"
stretched mesh.

TED extension webbing
no larger than 3.5"
stretched mesh.

FIGURE 6 TO PART 223—TED EXTENSION IN SUMMER FLOUNDER TRAWL
[64 FR 55864, Oct. 15, 1999]

FIGURES 7–9b TO PART 223 (RESERVED)
FLOUNDER TED

FRAME WIDTH:
Minimum 32 inches

MAXIMUM
16-1/2 inches

MINIMUM SIZE:
1-1/4 inch
Aluminum Pipe
with 1/8 inch
Wall Thickness

FRAME HEIGHT:
Minimum 51
inches

4 inch
Max.

[58 FR 54069, Oct. 20, 1993]
FIGURE 11 TO PART 223—JONES TED

[58 FR 54070, Oct. 20, 1993]
ATTACHMENT OF THE EXIT HOLE COVER

FIGURE 12A TO PART 223—ATTACHMENT OF THE EXIT HOLE COVER

[59 FR 25830, May 18, 1994]
GRID TED LEATHERBACK MODIFICATION

Figure 12B to Part 223—Grid Ted Leatherback Modification

[59 FR 25831, May 18, 1994]
FIGURE 13 TO PART 223—SINGLE GRID HARD TED ESCAPE OPENING

(60 FR 15520, Mar. 24, 1995)
FIGURE 14A TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH STRAIGHT BARS ATTACHED TO THE BOTTOM OF THE FRAME

FIGURE 14B TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH BENT BARS ATTACHED TO THE BOTTOM OF THE FRAME

[61 FR 66946, Dec. 19, 1996]
Weedless Grid

Figure 15 to Part 223—Maximum Angle of Deflector Bars With Bars Unattached to the Bottom of the Frame

[61 FR 66947, Dec. 19, 1996]
FIGURE 16 TO PART 223—ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED

[66 FR 24289, May 14, 2001]
§ 224.101 Enumeration of endangered marine and anadromous species.

The marine and anadromous species determined by the Secretary of Commerce to be endangered pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) Marine and anadromous fish. The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.
<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Scientific Name</th>
<th>Where listed</th>
<th>When listed</th>
<th>Critical habitat</th>
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<tr>
<td>Southern California steelhead</td>
<td>Oncorhynchus mykiss</td>
<td></td>
<td>U.S.A., CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to Malibu Creek, Los Angeles County, California (inclusive)</td>
<td>62 FR 43937, Aug. 18, 1997; 64 FR 5740, Feb. 5, 1999</td>
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<td>Upper Columbia River steelhead</td>
<td>Oncorhynchus mykiss</td>
<td></td>
<td>U.S.A., WA, including the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S.—Canada Border</td>
<td>62 FR 43937, Aug. 18, 1997; 64 FR 5740, Feb. 5, 1999</td>
<td></td>
</tr>
<tr>
<td>Upper Columbia River spring-run chinook salmon</td>
<td>Oncorhynchus tshawytscha</td>
<td></td>
<td>U.S.A., WA, including all naturally spawned populations of chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, and the Chiwawa River (spring run), Methow River (spring run), Twisp River (spring run), Chelan River (spring run), White River (spring run), and Nason Creek (spring run) hatchery stocks (and their progeny)</td>
<td>64 FR 14308, Mar. 24, 1999; 65 FR 7764, Feb. 16, 2000</td>
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<tr>
<td>Species</td>
<td>Common Name</td>
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<tr>
<td>Salmon, Atlantic</td>
<td>Salmo salar</td>
<td>U.S.A., ME Gulf of Maine Atlantic Salmon Distinct Population Segment, which includes all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border. To date, the Services have determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, Maine.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Totoaba</td>
<td>Cynoscion macdonaldi</td>
<td>Mexico, Gulf of CA</td>
<td>NA</td>
<td>44 FR 29480, May 21, 1979</td>
<td></td>
</tr>
</tbody>
</table>

1 Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991)
§ 224.102 Permits for endangered marine and anadromous species.

No person shall take, import, export, or engage in any activity prohibited by section 9 of the Act involving any marine species that has been determined to be endangered under the Endangered Species Conservation Act of 1969 or the Act, and that is under the jurisdiction of the Secretary, without a valid permit issued pursuant to part 222, subpart C of this chapter.

§ 224.103 Special prohibitions for endangered marine mammals.

(a) Approaching humpback whales in Hawaii. Except as provided in part 222, subpart C of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (Megaptera novaeangliae):

(1) Operate any aircraft within 1,000 feet (300 m) of any humpback whale;

(2) Approach, by any means, within 100 yard (90 m) of any humpback whale;

(3) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or

(4) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

(b) Approaching humpback whales in Alaska—(1) Prohibitions. Except as provided under paragraph (b)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of Alaska, or within inland waters of the state, any of the acts in paragraphs (b)(1)(i) through (b)(1)(iii) of this section with respect to humpback whales (Megaptera novaeangliae):

(i) Approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4 m) of the vessel), within 100 yards (91.4 m) of any humpback whale;
(ii) Cause a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale; or
(iii) Disrupt the normal behavior or prior activity of a whale by any other act or omission, as described in paragraph (a)(4) of this section.

(2) Exceptions. The following exceptions apply to this paragraph (b), but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraph (b)(1) of this section does not apply if an approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraph (b)(1) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (b)(1) of this section.

(iii) Paragraph (b)(1) of this section does not apply to commercial fishing vessels lawfully engaged in actively setting, retrieving or closely tending commercial fishing gear. For purposes of this paragraph (b), commercial fishing means taking or harvesting fish or fishery resources to sell, barter, or trade. Commercial fishing does not include commercial passenger fishing operations (i.e., charter operations or sport fishing activities).

(iv) Paragraph (b)(1) of this section does not apply to state, local, or Federal government vessels operating in the course of official duty.

(v) Paragraph (b)(1) of this section does not affect the rights of Alaska Natives under 16 U.S.C. 1538(e).

(vi) These regulations shall not take precedence over any more restrictive conflicting Federal regulation pertaining to humpback whales, including the regulations at 36 CFR 13.65 that pertain specifically to the waters of Glacier Bay National Park and Preserve.

(3) General measures. Notwithstanding the prohibitions and exceptions in paragraphs (b)(1) and (2) of this section, to avoid collisions with humpback whales, vessels must operate at a slow, safe speed when near a humpback whale. “Safe speed” has the same meaning as the term is defined in 33 U.S.C. 2006 and the International Regulations for Preventing Collisions at Sea 1972 (see 33 U.S.C. 1602), with respect to avoiding collisions with humpback whales.

(c) Approaching North Atlantic right whales—(1) Prohibitions. Except as provided under paragraph (b)(3) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or cause to be committed any of the following acts:

(i) Approach (including by interception) within 500 yards (460 m) of a right whale by vessel, aircraft, or any other means;

(ii) Fail to undertake required right whale avoidance measures specified under paragraph (b)(2) of this section.

(2) Right whale avoidance measures. Except as provided under paragraph (b)(3) of this section, the following avoidance measures must be taken if within 500 yards (460 m) of a right whale:

(i) If underway, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed.

(ii) An aircraft must take a course away from the right whale and immediately leave the area at a constant airspeed.

(3) Exceptions. The following exceptions apply to this section, but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraphs (b)(1) and (b)(2) of this section do not apply if a right whale approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraphs (b)(1) and (b)(2) of this section do not apply where compliance would create an imminent and serious threat to a person, vessel, or aircraft.

(iii) Paragraphs (b)(1) and (b)(2) of this section do not apply when approaching to investigate a right whale entanglement or injury, or to assist in the disentanglement or rescue of a right whale, provided that permission
§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

(a) Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by shrimp trawl gear.

(b) Summer flounder fishermen in the Summer flounder fishery-sea turtle protection area who comply with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by summer flounder gear.

(c) Special prohibitions relating to leatherback sea turtles are provided at § 223.206 (d)(2)(iv) and § 223.206 (d)(6) of this chapter.

§ 226.201 Critical habitat for Hawaiian monk seals.


§ 226.203 Critical habitat for Northern right whales.

§ 226.204 Critical habitat for Sacramento winter-run chinook salmon.

§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.

§ 226.206 (Reserved)

§ 226.207 Critical habitat for leatherback turtle.

§ 226.208 Critical habitat for green turtle.

§ 226.209 Critical habitat for hawksbill turtle.

§ 226.210 Central California Coast Coho Salmon (Oncorhynchus kisutch), Southern Oregon: Northern California Coasts Coho Salmon (Oncorhynchus kisutch).

§ 226.212 Critical habitat designation for 19 evolutionary significant units of salmon and steelhead in Washington, Oregon, Idaho, and California.

§ 226.213 Critical habitat for Johnson’s seagrass.

TABLE 1 TO PART 226—MAJOR STELLER SEA LION ROOKERY SITES

TABLE 2 TO PART 226—MAJOR STELLER SEA LION HAULOUT SITES IN ALASKA

TABLE 3 TO PART 226—HYDROLOGIC UNITS CONTAINING CRITICAL HABITAT FOR SNAKE RIVER SOCKEYE SALMON AND SNAKE RIVER SPRING/SUMMER AND FALL CHINOOK SALMON

TABLE 4 TO PART 226 [RESERVED]

TABLE 5 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL CALIFORNIA COAST COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

TABLE 6 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SOUTHERN OREGON/NORTHERN CALIFORNIA COASTS COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

TABLE 7 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR PUGET SOUND CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

TABLE 8 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR LOWER COLUMBIA RIVER CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

TABLE 9 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR UPPER WILLAMETTE RIVER CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

PART 225 [RESERVED]
TABLE 10 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Upper Columbia River Spring-run Chinook Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 11 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Central Valley California Spring-run Chinook Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 12 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for California Coastal Chinook Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 13 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Hood Canal Summer-run Chum Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 14 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Columbia River Chum Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 15 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Oregon Coast Coho Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 16 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Southern California Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 17 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for South-Central California Coast Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 18 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Central California Coast Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 19 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Central Valley Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 20 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Upper Columbia River Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 21 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Snake River Basin Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 22 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Lower Columbia River Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 23 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Upper Willamette River Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  

TABLE 24 TO PART 226—Hydrologic Units and Counties Containing Critical Habitat for Middle Columbia River Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.  


§ 226.101 Purpose and scope.  

The regulations contained in this part identify those habitats designated by the Secretary of Commerce as critical under section 4 of the Act, for endangered and threatened species under the jurisdiction of the Secretary of Commerce. Those species are enumerated at §223.102 of this chapter, if threatened and at §224.101 of this chapter, if endangered. For regulations pertaining to the designation of critical habitat, see part 424 of this title, and for regulations pertaining to prohibitions against the adverse modification or destruction of critical habitat, see part 402 of this title. Maps and charts identifying designated critical habitat that are not provided in this section may be obtained upon request to the Office of Protected Resources (see §222.102, definition of “Office of Protected Resources”).  

[64 FR 14067, Mar. 23, 1999]  

§ 226.201 Critical habitat for Hawaiian monk seals.  

HAWAIIAN MONK SEAL  
(Monachus schauinslandi)  

All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:  

Kure Atoll (28°24' N, 178°20' W)
§ 226.201 50 CFR Ch. II (10–1–01 Edition)

Midway Islands, except Sand Island and its harbor (26°14' N, 177°22' W)
Pearl and Hermes Reef (27°55' N, 175° W)
Lisianski Island (26°46' N, 173°58' W)
Laysan Island (25°46' N, 171°44' W)
Maro Reef (25°25' N, 170°35' W)
Gardner Pinnacles (25°00' N, 168°00' W)
French Frigate Shoals (23°45' N, 166°00' W)
Necker Island (23°34' N, 164°42' W)
Nihoa Island (23°03.5' N, 161°55.5' W).

(from NOS chart 19480)
NIHOA ISLAND

(from NOS chart 19016)


Steller Sea Lion (Eumetopias jubatus)

(a) Alaska rookeries, haulouts, and associated areas. In Alaska, all major Steller sea lion rookeries identified in Table 1 and major haulouts identified in Table 2 and associated terrestrial, air, and aquatic zones. Critical habitat includes a terrestrial zone that extends 3,000 feet (0.9 km) landward from the baseline or base point of each major rookery and major haulout in Alaska. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above the terrestrial zone of each major rookery and major haulout in Alaska, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or base point of each major rookery and major haulout in Alaska. Critical habitat includes an aquatic zone that extends 20 nm (37 km) seaward in State and Federally managed waters from the baseline or base point of each major rookery and major haulout in Alaska that is west of 144° W. longitude.

(b) California and Oregon rookeries and associated areas. In California and Oregon, all major Steller sea lion rookeries identified in Table 1 and associated air and aquatic zones. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above areas historically occupied by sea lions at each major rookery in California and Oregon, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or base point of each major rookery in California and Oregon.

(c) Three special aquatic foraging areas in Alaska. Three special aquatic foraging areas in Alaska, including the Shellikof Strait area, the Bogoslof area, and the Seguam Pass area.

1. Critical habitat includes the Shellikof Strait area in the Gulf of Alaska and consists of the area between the Alaska Peninsula and Tugidak, Sittkinak, Afognak, Kodiak, Raspberry, Shuyak Island (connected by the shortest lines); bounded on the west by a line connecting Cape Kumlik (56°38’157°27’W) and the southwestern tip of Tugidak Island (56°24’154°41’W) and bounded in the east by a line connecting Cape Douglas (58°51’153°15’W) and the northernmost tip of Shuyak Island (58°37’N152°22’W).

2. Critical habitat includes the Bogoslof area in the Bering Sea shelf and consists of the area between 170°00’W and 164°00’W, south of straight lines connecting 55°00’N170°00’W and 55°00’N168°00’W; 55°30’N168°00’W and 55°30’N166°00’W; 56°00’N166°00’W and 56°00’N164°00’W and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed:

52°49.2’N169°40.4’W
52°49.8’N169°06.3’W
53°23.8’N167°50.1’W
53°18.7’N167°51.4’W
53°59.0’N166°17.2’W
54°02.9’N166°03.0’W
54°07.7’N165°40.6’W
54°08.9’N165°38.8’W
54°11.9’N165°23.3’W
54°23.9’N164°44.0’W

3. Critical habitat includes the Seguam Pass area and consists of the area between 52°00’N and 53°00’N and between 173°30’W and 172°30’W.

§ 226.203 Critical habitat for Northern right whales.

Northern Right Whale (Eubalaena glacialis)

(a) Great South Channel. The area bounded by 41°40’ N69°45’ W; 41°00’ N69°05’ W; 41°38’ N68°13’ W; and 42°10’ N68°31’ W.

(b) Cape Cod Bay, Massachusetts. The area bounded by 42°04.8’ N70°10’ W; 42°12’ N70°15’ W; 42°12’ N70°30’ W; 41°46.8’ N70°30’ W and on the south and east by the interior shore line of Cape Cod, Massachusetts.

(c) Southeastern United States. The coastal waters between 31°15’ N and 30°15’ N from the coast out 15 nautical miles; and the coastal waters between
§ 226.204 Critical habitat for Sacramento winter-run chinook salmon.

The following waterways, bottom and water of the waterways and adjacent riparian zones: The Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge.

[58 FR 33218, June 16, 1993. Redesignated and amended at 64 FR 14067, Mar. 23, 1999]

§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.

The following areas consisting of the water, waterway bottom, and adjacent riparian zone of specified lakes and river reaches in hydrologic units presently or historically accessible to listed Snake River salmon (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams). Adjacent riparian zones are defined as those areas within a horizontal distance of 300 feet (91.4 m) from the normal line of high water of a stream channel (600 feet or 182.8 m, when both sides of the stream channel are included) or from the shoreline of a standing body of water. The complete text delineating critical habitat for each species follows. Hydrologic units (table 3) are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, “Hydrologic Unit Maps, United States Geological Survey Water Supply Paper 2294, 1987”, and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974, which are incorporated by reference.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 22286, Denver, CO 80225. Copies may be inspected at NMFS, Endangered Species Branch, Environmental and Technical Services Division, 911 NE. 11th Avenue, room 620, Portland, OR 97232, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(a) Snake River Sockeye Salmon (Oncorhynchus nerka). The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to the confluence of the Salmon River; all Salmon River reaches from the confluence of the Snake River upstream to Alturas Lake Creek; Stanley, Redfish, Yellow Belly, Pettit, and Alturas Lakes (including their inlet and outlet creeks); Alturas Lake Creek, and that portion of Valley Creek between Stanley Lake Creek and the Salmon River. Critical habitat is comprised of all river lakes and reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River sockeye salmon in the following hydrologic units: Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, and Upper Salmon. Critical habitat borders on or passes through the following counties in Oregon: Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, Walla, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Blaine,
§ 226.206 Critical habitat for leatherback turtle.

LEATHERBACK SEA TURTLE
(DERMOCHELYS CORIACEA)

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoredward to the level of mean high tide with boundaries at 17°42′12″ North and 64°50′00″ West. 

§ 226.208 Critical habitat for green turtle.

(c) Snake River Fall Chinook Salmon (Oncorhynchus tshawytscha). The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; the Snake River, all river reaches from the confluence of the Columbia River, upstream to Hells Canyon Dam; the Palouse River from its confluence with the Snake River upstream to Palouse Falls; the Clearwater River from its confluence with the Snake River upstream to its confluence with Lolo Creek; the North Fork Clearwater River from its confluence with the Clearwater River upstream to Dworshak Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Clearwater, Hells Canyon, Imnaha, Lower Grande Ronde, Lower North Fork Clearwater, Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, and Palouse. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, Wallowa, Wasco; the following counties in Washington: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Lincoln, Pacific, Skamania, Spokane, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Benewah, Clearwater, Idaho, Latah, Lewis, Nez Perce, Shoshone, Valley.

§ 226.210 Central California Coast Coho Salmon (Oncorhynchus kisutch), Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho within the range of the ESUs listed, except for reaches on Indian lands defined in Tables 5 and 6 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 5 and 6 to this part for all of the coho ESUs listed in this section. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 5 of this part or above long-standing, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch). Critical habitat is designated to include all river reaches accessible to listed coho salmon on between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 6 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 6 of this part or above long-standing, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).
§ 226.212 Critical habitat designation for 19 evolutionary significant units of salmon and steelhead in Washington, Oregon, Idaho, and California.

Critical habitat is designated to include all river reaches accessible to listed salmon or steelhead within the range of the ESUs listed, except for reaches on Indian lands. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 7 through 24 to this part for all of the salmon and steelhead ESUs listed in this section. Accessible reaches are those within the historical range of the ESUs that can still be occupied by any life stage of salmon or steelhead. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of each ESU identified in Tables 7 through 24 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, “Hydrologic Unit Maps,” Water Supply Paper 2294, 1987, and the following DOI, USGS, 1:500,000 Scale Hydrologic Unit Maps: State of Oregon (1974), State of Washington (1974), State of California (1978), and State of Idaho (1981), which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street-Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 200 North Capitol Street, NW., Suite 700, Washington, DC.

(a) Puget Sound Chinook Salmon (Oncorhynchus tshawytscha) geographic boundaries. Critical habitat is designated to include all marine, estuarine and river reaches accessible to listed chinook salmon in Puget Sound. Puget Sound marine areas include South Sound, Hood Canal, and North Sound to the international boundary at the outer extent of the Strait of Georgia, Haro Strait, and the Strait of Juan De Fuca to a straight line extending north from the west end of Freshwater Bay, inclusive. Excluded are areas above specific dams identified in Table 7 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) Lower Columbia River Chinook Salmon (Oncorhynchus tshawytscha) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed chinook salmon in Columbia River tributaries between the Grays and White Salmon Rivers in Washington and the Willamette and Hood Rivers in Oregon, inclusive. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the east end of the Peacock jetty (north jetty, Washington side) upstream to the Dalles Dam. Excluded are areas above specific dams identified in Table 8 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(c) Upper Willamette River chinook salmon (Oncorhynchus tshawytscha) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed chinook salmon in the Clackamas River and the Willamette River and its tributaries above Willamette Falls. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the east end of the Peacock jetty (north jetty, Washington side) upstream to, and including, the Willamette River in Oregon. Excluded are areas above specific dams identified in Table 9 to this part or above longstanding, naturally
impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(d) Upper Columbia River Spring-run Chinook salmon (Oncorhynchus tshawytscha) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington, excluding the Okanogan River. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington. Excluded are areas above specific dams identified in Table 10 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(e) Central Valley Spring-run chinook salmon (Oncorhynchus tshawytscha) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed chinook salmon in the Sacramento River and its tributaries in California. Also included are river reaches and estuarine areas of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge. Excluded are areas above specific dams identified in Table 10 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(f) California Coastal Chinook Salmon (Oncorhynchus tshawytscha) geographic boundaries. Critical habitat is designated to include all river reaches and estuarine areas accessible to listed chinook salmon from Redwood Creek (Humboldt County, California) to the Russian River (Sonoma County, California) inclusive. Excluded are areas above specific dams identified in Table 12 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(g) Hood Canal Summer-run Chum Salmon (Oncorhynchus keta) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed chum salmon (including estuarine areas and tributaries) draining into Hood Canal as well as Olympic Peninsula rivers between and including Hood Canal and Dungeness Bay, Washington. Also included are estuarine/marine areas of Hood Canal, Admiralty Inlet, and the Straits of Juan De Fuca to the international boundary and as far west as a straight line extending north from Dungeness Bay. Excluded are areas above specific dams identified in Table 13 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(h) Columbia River Chum Salmon (Oncorhynchus keta) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed chum salmon (including estuarine areas and tributaries) in the Columbia River downstream from Bonneville Dam, excluding Oregon tributaries upstream of Milton Creek at river km 144 near the town of St. Helens. Excluded are areas above specific dams identified in Table 14 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(i) Ozette Lake Sockeye Salmon (Oncorhynchus nerka) geographic boundaries. Critical habitat is designated to include all lake areas and river reaches accessible to listed sockeye salmon in Ozette Lake, located in Clallam County, Washington. Excluded are areas above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(j) Oregon Coast coho salmon (Oncorhynchus kisutch) geographic boundaries. Critical habitat is designated to include all river reaches and estuarine areas accessible to listed coho salmon from coastal streams south of the Columbia River and north
§226.212                      50 CFR Ch. II (10–1–01 Edition)

of Cape Blanco, Oregon. Excluded are areas above specific dams identified in Table 15 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(k) Southern California steelhead (Oncorhynchus mykiss) geographic boundaries. Critical habitat is designated to include all river reaches and estuarine areas accessible to listed steelhead in coastal river basins from the Santa Maria River to Malibu Creek, California (inclusive). Excluded are areas above specific dams identified in Table 16 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(l) South-Central California Coast steelhead (Oncorhynchus mykiss) geographic boundaries. Critical habitat is designated to include all river reaches and estuarine areas accessible to listed steelhead in coastal river basins from the Pajaro River (inclusive) to, but not including, the Santa Maria River, California. Excluded are areas above specific dams identified in Table 17 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(m) Central California Coast steelhead (Oncorhynchus mykiss) geographic boundaries. Critical habitat is designated to include all river reaches and estuarine areas accessible to listed steelhead in coastal river basins from the Russian River to Apts Creek, California (inclusive), and the drainages of San Francisco and San Pablo Bays. Also included are all waters of San Pablo Bay westward of the Carquinez Bridge and all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge. Excluded are areas above specific dams identified in Table 18 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(n) Central Valley steelhead (Oncorhynchus mykiss) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed steelhead in the Sacramento and San Joaquin Rivers and their tributaries in California. Also included are river reaches and estuarine areas of the Sacramento-San Joaquin Delta, all waters from Chippis Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge. Excluded are areas of the San Joaquin River upstream of the Merced River confluence and areas above specific dams identified in Table 19 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(o) Upper Columbia River steelhead (Oncorhynchus mykiss) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed steelhead in Columbia River tributaries upstream of the Yakima River, Washington, and downstream of Chief Joseph Dam. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington. Excluded are areas above specific dams identified in Table 20 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(p) Snake River Basin steelhead (Oncorhynchus mykiss) geographic boundaries. Critical habitat is designated to include all river reaches accessible to listed steelhead in the Snake River and its tributaries in Idaho, Oregon, and Washington. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to the confluence with the Snake River. Excluded are areas above specific dams identified in Table 21 to this part or above longstanding,
naturally impassable barriers (i.e., Napias Creek Falls and other natural waterfalls in existence for at least several hundred years).

(q) **Lower Columbia River steelhead (Oncorhynchus mykiss) geographic boundaries.** Critical habitat is designated to include all river reaches accessible to listed steelhead in Columbia River tributaries between the Cowlitz River and the Yakima River in Washington. Included are areas above specific dams identified in Table 24 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

[65 FR 7777, Feb. 16, 2000]

§ 226.213 **Critical habitat for Johnson's seagrass.**

Critical habitat is designated to include substrate and water in the following ten portions of the Indian River Lagoon and Biscayne Bay within the current range of Johnson's seagrass.

(a) A portion of the Indian River, Florida, north of Sebastian Inlet Channel, defined by the following coordinates:

- Northeast corner: 27°51'16.37"N, 80°27'55.49"W
- Southeast corner: 27°51'11.58"N, 80°27'47.35"W

(b) A portion of the Indian River, Florida, south of the Sebastian Inlet Channel, defined by the following coordinates:

- Northwest corner: 27°51'01.32"N, 80°27'46.10"W
- Southwest corner: 27°50'55.88"N, 80°27'41.84"W
- Northeast corner: 27°51'01.07"N, 80°27'40.50"W

(c) A portion of the Indian River Lagoon in the vicinity of the Fort Pierce Inlet. This site is located on the north side of the entrance channel just west of a small mangrove vegetated island where the main entrance channel bifurcates to the north. The area is defined by the following coordinates:

- Northeast corner: 27°28'06.60"N, 80°18'46.89"W
- Southwest corner: 27°28'02.25"N, 80°18'49.06"W
- Southeast corner: 27°28'01.46"N, 80°18'22.22"W

(d) A portion of the Indian River Lagoon, Florida, north of the St. Lucie Inlet, from South Netts Island to the
§ 226.213  

Florida Oceanographic Institute, defined by the following coordinates and excluding the Federally-marked navigation channel of the Intracoastal Waterway (ICW):  

Northwest corner: 27°16'44.04"N, 80°14'00.00"W  
Northeast corner: 27°16'44.04"N, 80°12'51.33"W  
Southwest corner: 27°12'49.70"N, 80°14'46.80"W  
Southeast corner: 27°12'49.70"N, 80°11'02.50"W  

(e) Hobe Sound beginning at State Road 708 (27°03'49.90"N, 80°07'20.57"W) and extending south to 27°00'00.00"N, 80°05'32.34"W and excluding the federally-marked navigation channel of the ICW.  

(f) Jupiter Inlet at a site located just west of the entrance to Zeek's Marina on the south side of Jupiter Inlet and defined by the following coordinates (note a south central point was included to better define the shape of the southern boundary):  

Northwest corner: 26°56'43.34"N, 80°04'47.84"W  
Northeast corner: 26°56'40.93"N, 80°04'42.61"W  
Southwest corner: 26°56'40.73"N, 80°04'44.65"W  
South central point: 26°56'38.11"N, 80°04'45.83"W  
Southeast corner: 26°56'38.31"N, 80°04'42.41"W  

(g) A portion of Lake Worth, Florida, just north of Bingham Island defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:  

Northwest corner: 26°40'44.00"N, 80°02'39.00"W  
Northeast corner: 26°40'40.00"N, 80°02'34.00"W  
Southwest corner: 26°40'32.00"N, 80°02'44.00"W  
Southeast corner: 26°40'33.00"N, 80°02'35.00"W  

(h) A portion of Lake Worth Lagoon, Florida, located just north of the Boynton Inlet, on the west side of the ICW, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:  

Northwest corner: 26°33'28.00"N, 80°02'54.00"W  
Northeast corner: 26°33'30.00"N, 80°03'04.00"W  
Southwest corner: 26°32'50.00"N, 80°03'11.00"W  
Southeast corner: 26°32'50.00"N, 80°02'58.00"W  

(i) A portion of northeast Lake Wyman, Boca Raton, Florida, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:  

Northwest corner: 26°22'27.00"N, 80°04'23.00"W  
Northeast corner: 26°22'27.00"N, 80°04'19.00"W  
Southwest corner: 26°22'20.00"N, 80°04'16.00"W  
Southeast corner: 26°22'20.00"N, 80°04'18.00"W  

(j) A portion of Northern Biscayne Bay, Florida, defined by the following: The northern boundary of Biscayne Bay Aquatic Preserve, NE 163rd Street, and including all parts of the Biscayne Bay Aquatics Preserve as defined in 18-18.002 of the Florida Administrative Code (F.A.C.) excluding the Oleta River, Miami River and Little River beyond their mouths, the federally-marked navigation channel of the ICW, and all existing federally authorized navigation channels, basins, and berths at the Port of Miami to the currently documented southernmost range of Johnson's seagrass, Central Key Biscayne (25°45'N).
Figure 3
Figure 7

- Critical Habitat
- Lake Worth
- Atlantic Ocean
- Boynton Inlet
- Boynton Canal

80°4' 80°3' 80°2'
26°34'
26°33'
26°32'

80°4' 80°3' 80°2'
26°34'
26°33'
26°32'

201
Major Steller sea lion rookery sites are identified in the following table. Where two sets of coordinates are given, the baseline extends 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. Where only one set of coordinates is listed, that location is the base point.
<table>
<thead>
<tr>
<th>State/region/site</th>
<th>Latitudes and Longitudes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Alaska:</strong></td>
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<tr>
<td><strong>Western Aleutians:</strong></td>
<td></td>
</tr>
<tr>
<td>Agattu I.</td>
<td>52 23.5N ............... 173 43.5E</td>
</tr>
<tr>
<td>Cape Sabak 1</td>
<td>52 24.0N ............... 173 21.5E</td>
</tr>
<tr>
<td>Ugiak I.</td>
<td>52 54.5N ............... 172 28.5E</td>
</tr>
<tr>
<td>Attu I.</td>
<td>52 20.5N ............... 175 57.0E</td>
</tr>
<tr>
<td><strong>Central Aleutians:</strong></td>
<td></td>
</tr>
<tr>
<td>Adak I.</td>
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<td>Amchitka I.</td>
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<td>Column Rock 1</td>
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</tr>
<tr>
<td>Ayuagak I.</td>
<td>51 45.5N ............... 179 24.5E</td>
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<tr>
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<td>Cape St. Stephen 1</td>
<td>51 52.5N ............... 177 13.0E</td>
</tr>
<tr>
<td>Seguam I./Saddleridge 1</td>
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<td>Semisopochnok I.:</td>
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<tr>
<td>Petrel Pt 1</td>
<td>52 01.5N ............... 179 37.5E</td>
</tr>
<tr>
<td>Tag I.</td>
<td>51 33.5N ............... 178 34.5W</td>
</tr>
<tr>
<td>Uvak I.</td>
<td>51 20.0N ............... 178 57.0W</td>
</tr>
<tr>
<td>Yunaska I.</td>
<td>52 42.0N ............... 170 38.5W</td>
</tr>
<tr>
<td><strong>Eastern Aleutian:</strong></td>
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<tr>
<td>Adak I.</td>
<td>52 55.0N ............... 169 10.5W</td>
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<td>Akun I./Billings Head 1</td>
<td>54 18.0N ............... 165 32.5W</td>
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<td>54 03.5N ............... 166 00.0W</td>
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<td>Bogoslof I.</td>
<td>53 56.0N ............... 168 02.0W</td>
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<td>Ochul I.</td>
<td>53 00.0N ............... 168 24.0W</td>
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<tr>
<td>Sea Lion Rocks. (Amak) 1</td>
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<td>Ugamak I.</td>
<td>54 14.0N ............... 164 48.0W</td>
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<td><strong>Bering Sea:</strong></td>
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<td>Walrus I.</td>
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<td>Atkins I.</td>
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<td>Seal Rocks 1</td>
<td>60 10.0N ............... 146 50.0W</td>
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<tr>
<td>Fish I.</td>
<td>59 53.0N ............... 147 20.5W</td>
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<tr>
<td><strong>Southeast Alaska:</strong></td>
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<tr>
<td>Forrester I.</td>
<td>54 51.0N ............... 133 32.0W</td>
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<tr>
<td>Hare I.</td>
<td>55 52.0N ............... 134 34.0W</td>
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<td>White Sisters</td>
<td>57 38.0N ............... 136 15.5W</td>
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<td><strong>Oregon:</strong></td>
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<td>Rogue Reef: Pyramid Rock</td>
<td>42 26.4N ............... 124 28.1W</td>
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<td>Orford Reef:</td>
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<td>Sugarloaf I. &amp; Cape Mendocino</td>
<td>40 26.0N ............... 124 24.0W</td>
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</table>

1 Includes an associated 20 NM aquatic zone.
2 Associated 20 NM aquatic zone lies entirely within one of the three special foraging areas.

[58 FR 45278, Aug. 27, 1993]
**TABLE 2 TO PART 226—MAJOR STELLAR SEA LION HAULOUT SITES IN ALASKA**

Major Steller sea lion haulout sites in Alaska are identified in the following table. Where two sets of coordinates are given, the baseline extends 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. Where only one set of coordinates is listed, that location is the basepoint.

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<td>Alaid I. ^a^</td>
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<td>52 46.5N</td>
<td>173 51.5E</td>
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<td>Shemya I. ^a^</td>
<td>52 44.0N</td>
<td>174 09.0E</td>
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<tr>
<td>Amaknak I. ^a^</td>
<td>51 13.0N</td>
<td>179 08.0E</td>
<td></td>
<td></td>
</tr>
<tr>
<td>East ^a^</td>
<td>52 05.0N</td>
<td>172 58.5N</td>
<td>52 06.0N</td>
<td>172 57.0N</td>
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<td>Sivich. Harbor ^a^</td>
<td>52 02.0N</td>
<td>173 23.0W</td>
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<td>Amak I. &amp; Rocks ^a^</td>
<td>52 31.0N</td>
<td>171 16.5W</td>
<td>52 26.5N</td>
<td>171 16.5W</td>
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<td>51 54.0N</td>
<td>177 27.0W</td>
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<td>52 42.0N</td>
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<td>Chugmark I. ^a^</td>
<td>52 46.0N</td>
<td>169 44.5W</td>
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<td>179 61.5W</td>
<td>51 34.5N</td>
<td>178 49.5W</td>
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<td>Kiska I./Sirius Pt. ^a^</td>
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<td>177 36.5E</td>
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<tr>
<td>Kiska I./Sobaka &amp; Vega ^a^</td>
<td>51 50.0N</td>
<td>177 20.0E</td>
<td>51 48.5N</td>
<td>177 20.5E</td>
</tr>
<tr>
<td>Little Sitkin I. ^a^</td>
<td>51 59.0N</td>
<td>178 30.0E</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Little Tanaga I. ^a^</td>
<td>51 50.0N</td>
<td>176 13.0W</td>
<td>51 49.0N</td>
<td>176 13.0W</td>
</tr>
<tr>
<td>Sagishik I. ^a^</td>
<td>52 00.0N</td>
<td>173 08.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seguam I. ^a^</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South ^a^</td>
<td>52 19.5N</td>
<td>172 18.0W</td>
<td>52 15.0N</td>
<td>172 37.0W</td>
</tr>
<tr>
<td>Finch Pt. ^a^</td>
<td>52 23.5N</td>
<td>172 25.5W</td>
<td>52 23.5N</td>
<td>172 24.0W</td>
</tr>
<tr>
<td>Segula I. ^a^</td>
<td>52 09.0N</td>
<td>176 06.5W</td>
<td>52 03.0N</td>
<td>179 09.0E</td>
</tr>
<tr>
<td>Tanaga I. ^a^</td>
<td>51 55.0N</td>
<td>177 58.5W</td>
<td>51 55.0N</td>
<td>177 57.0W</td>
</tr>
<tr>
<td>Tanadak I. (Alma) ^a^</td>
<td>52 04.5N</td>
<td>172 57.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tanadak I. (Segula) ^a^</td>
<td>51 57.0N</td>
<td>177 47.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ugldak I. ^a^</td>
<td>51 35.0N</td>
<td>178 30.5W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ululga I. ^a^</td>
<td>53 04.0N</td>
<td>169 47.0W</td>
<td>53 05.0N</td>
<td>169 46.0W</td>
</tr>
<tr>
<td>Ualga &amp; Dinkum Rocks ^a^</td>
<td>51 34.0N</td>
<td>179 04.0W</td>
<td>51 34.5N</td>
<td>179 03.0W</td>
</tr>
<tr>
<td><strong>Eastern Aleutians:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Akutan I./Reef-Lava ^a^</td>
<td>54 10.5N</td>
<td>166 04.5W</td>
<td>54 07.5N</td>
<td>166 06.5W</td>
</tr>
<tr>
<td>Amak I. ^a^</td>
<td>55 24.0N</td>
<td>163 07.0W</td>
<td>55 26.0N</td>
<td>163 10.0W</td>
</tr>
<tr>
<td>Cape Sedanka &amp; Island ^a^</td>
<td>53 50.0N</td>
<td>166 05.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emerald I. ^a^</td>
<td>53 17.5N</td>
<td>167 51.5W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Old Man Rocks ^a^</td>
<td>53 52.0N</td>
<td>166 05.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Polivnoi Rock ^a^</td>
<td>53 16.0N</td>
<td>167 58.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tongnak I. ^a^</td>
<td>54 13.0N</td>
<td>165 45.5W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tigalda I. ^a^</td>
<td>54 08.5N</td>
<td>164 58.5W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unnak I./Cape Aslik ^a^</td>
<td>53 25.0N</td>
<td>168 24.5W</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Bering Sea:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cape Newenham ^a^</td>
<td>58 39.0N</td>
<td>162 10.5W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hall I. ^a^</td>
<td>60 37.0N</td>
<td>173 00.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Round I. ^a^</td>
<td>58 36.0N</td>
<td>159 58.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Paul I.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northeast Point ^a^</td>
<td>57 15.0N</td>
<td>170 06.5W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sea Lion Rock ^a^</td>
<td>57 06.0N</td>
<td>170 17.5W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. George I.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S Rockery ^a^</td>
<td>56 33.5N</td>
<td>169 40.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dalnii Point ^a^</td>
<td>56 36.0N</td>
<td>169 46.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Lawrence I.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S Purnuk I. ^a^</td>
<td>64 04.0N</td>
<td>168 51.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SW Cape ^a^</td>
<td>63 18.0N</td>
<td>171 26.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Western Gulf of Alaska:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bird I. ^a^</td>
<td>54 40.5N</td>
<td>163 18.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Castle Rock ^a^</td>
<td>55 17.0N</td>
<td>159 30.0W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State/region/site</td>
<td>Latitude</td>
<td>Longitude</td>
<td>Boundaries to—</td>
<td>Latitude</td>
</tr>
<tr>
<td>------------------</td>
<td>----------</td>
<td>-----------</td>
<td>----------------</td>
<td>----------</td>
</tr>
<tr>
<td>Caton I.</td>
<td>54 23.5N</td>
<td>162 25.5W</td>
<td>..........................</td>
<td>..........................</td>
</tr>
<tr>
<td>Jude I.</td>
<td>55 16.0N</td>
<td>161 49.0W</td>
<td>..........................</td>
<td>..........................</td>
</tr>
<tr>
<td>Lighthouse Rocks</td>
<td>55 47.5N</td>
<td>157 24.0W</td>
<td>..........................</td>
<td>..........................</td>
</tr>
<tr>
<td>Nagai I.</td>
<td>54 52.5N</td>
<td>160 14.0W</td>
<td>..........................</td>
<td>54 56.0N</td>
</tr>
<tr>
<td>Nagai Fairweather</td>
<td>55 50.0N</td>
<td>155 46.0W</td>
<td>..........................</td>
<td>160 31.0W</td>
</tr>
<tr>
<td>Sea Lion Rocks</td>
<td>55 04.0N</td>
<td>156 40.0W</td>
<td>..........................</td>
<td>160 31.0W</td>
</tr>
<tr>
<td>South Rock</td>
<td>54 18.0N</td>
<td>162 24.5W</td>
<td>..........................</td>
<td>..........................</td>
</tr>
<tr>
<td>Spitz I.</td>
<td>55 47.0N</td>
<td>158 54.0W</td>
<td>..........................</td>
<td>55 16.5N</td>
</tr>
<tr>
<td>The Whaleback</td>
<td>55 16.5N</td>
<td>160 06.0W</td>
<td>..........................</td>
<td>..........................</td>
</tr>
</tbody>
</table>

Central Gulf of Alaska:
- Cape Barnabas
- Cape Chinak
- Cape Gull
- Cape Iloki
- Cape Kukak
- Cape Sitkinak
- Cape Ugat
- Gore Point
- Gulf Point
- Latas Rocks
- Long I.
- Nagahof Rocks
- Pulae Bay
- Sea Lion Rocks
- Sea Otter I.
- Shalun Rock
- Sild
- Sukw I.
- Takl I.
- Two-headed I.
- Ugak I.
- Ushagat I.
- Eastern Gulf of Alaska:
- Cape Fairbanks
- Cape St. Elas
- Chiswell Islands
- Graves Rock
- Hock Point
- Middleton I.
- Perry I.
- Point Eleanor
- Point Elington
- Seal Rocks
- The Needle
- Southeast Alaska:
- Benjamin I.
- Bias Rock
- Biorka I.
- Cape Addington
- Cape Cross
- Cape Ommaney
- Coronation I.
- Gran Point
- Luff Point
- Sunset I.
- Timbered I.
- 1 Includes an associated 20 NM aquatic zone.
- 2 Associated 20 nm aquatic zone lies entirely within one of the three special foraging areas.


### Table 3 to Part 226—Hydrologic Units Containing Critical Habitat for Snake River Sockeye Salmon and Snake River Spring/Summer and Fall Chinook Salmon

<table>
<thead>
<tr>
<th>Hydrologic unit name</th>
<th>Hydrologic unit number</th>
<th>Sockeye salmon</th>
<th>Spring/summer chinook salmon</th>
<th>Fall chinook salmon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hells Canyon</td>
<td>17060101</td>
<td>17060101</td>
<td>17060101</td>
<td>17060101</td>
</tr>
</tbody>
</table>
### TABLE 3 TO PART 226—HYDROLOGIC UNITS CONTAINING CRITICAL HABITAT FOR SNACK RIVER SOCKEYE SALMON AND SNACK RIVER SPRING/Summer AND FALL CHINOOK SALMON—Continued

<table>
<thead>
<tr>
<th>Hydrologic unit name</th>
<th>Hydrologic unit number</th>
<th>Sockeye salmon</th>
<th>Spring/summer chinook salmon</th>
<th>Fall chinook salmon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imnaha</td>
<td>17060103</td>
<td></td>
<td>17060102</td>
<td>17060102</td>
</tr>
<tr>
<td>Lower Snake—Asotin</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upper Grande Ronde</td>
<td>17060104</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wallowa</td>
<td>17060105</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower Grande Ronde</td>
<td>17060106</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower Snake—Tucannon</td>
<td>17060107</td>
<td></td>
<td>17060107</td>
<td>17060107</td>
</tr>
<tr>
<td>Palouse</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower Snake</td>
<td>17060110</td>
<td></td>
<td>17060110</td>
<td>17060110</td>
</tr>
<tr>
<td>Upper Salmon</td>
<td>17060201</td>
<td></td>
<td>17060201</td>
<td></td>
</tr>
<tr>
<td>Pahsimeri</td>
<td>17060202</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle Salmon—Panther</td>
<td>17060203</td>
<td></td>
<td>17060203</td>
<td></td>
</tr>
<tr>
<td>Lemhi</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upper Middle Fork Salmon</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower Middle Fork Salmon</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle Salmon—Chamberlain</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Fork Salmon</td>
<td>17060207</td>
<td></td>
<td>17060207</td>
<td></td>
</tr>
<tr>
<td>Lower Salmon</td>
<td>17060209</td>
<td></td>
<td>17060209</td>
<td>17060209</td>
</tr>
<tr>
<td>Little Salmon</td>
<td></td>
<td></td>
<td>17060210</td>
<td></td>
</tr>
<tr>
<td>Clearwater</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower North Fork Clearwater</td>
<td></td>
<td></td>
<td></td>
<td>17060306</td>
</tr>
</tbody>
</table>

1 Hydrologic units and names taken from DOI, USGS 1:500,000 scale hydrologic unit maps (available from USGS); State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974.

[58 FR 68552, Dec. 28, 1993]

### TABLE 4 [Reserved]

### TABLE 5 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL CALIFORNIA COAST COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

<table>
<thead>
<tr>
<th>Hydrologic unit name</th>
<th>Hydrologic unit No.</th>
<th>Counties and tribal lands contained in hydrologic unit and within the range of ESU</th>
<th>Dams (reservoirs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Lorenzo-Soquel</td>
<td>18060001</td>
<td>Santa Cruz (CA), San Mateo (CA)</td>
<td>Newell Dam (Loch Lomond).</td>
</tr>
<tr>
<td>San Francisco Coastal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South</td>
<td>18050006</td>
<td>San Mateo (CA).</td>
<td></td>
</tr>
<tr>
<td>San Pablo Bay</td>
<td>18050002</td>
<td>Marin (CA), Napa (CA)</td>
<td>Phoenix Dam (Phoenix Lake).</td>
</tr>
<tr>
<td>Tomales-Drake Bays</td>
<td>18050005</td>
<td>Marin (CA), Sonoma (CA)</td>
<td>Peters Dam (Kent Lake); Seeger Dam (Nicasio Reservoir).</td>
</tr>
<tr>
<td>Bodega Bay</td>
<td>18010110</td>
<td>Marin (CA), Sonoma (CA)</td>
<td>Warm Springs Dam (Lake Sonoma); Coyote Dam (Lake Mendocino).</td>
</tr>
<tr>
<td>Russian</td>
<td>18010110</td>
<td>Sonoma (CA), Mendocino (CA)—Cloverdale Rancheria; Coyote Valley Rancheria; Dry Creek Rancheria; Guindale Rancheria; Hopland Rancheria; Lytton Rancheria; Pineville Rancheria; Stewarts Point Rancheria.</td>
<td></td>
</tr>
<tr>
<td>Gualala-Salmon</td>
<td>18010109</td>
<td>Sonoma (CA), Mendocino (CA)—Manchester/Point Arena Rancheria.</td>
<td></td>
</tr>
<tr>
<td>Big Navarro-Garcia</td>
<td>18010108</td>
<td>Mendocino (CA)—Manchester/Point Arena Rancheria.</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

2 Tribal lands are specifically excluded from critical habitat for this ESU.

[64 FR 21061, May 5, 1999]
## TABLE 7 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR PUGET SOUND CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit Name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strait of Georgia</td>
<td>17110002</td>
<td>Skagit (WA), Whatcom (WA)</td>
<td></td>
</tr>
<tr>
<td>Sand Juan Islands</td>
<td>17110003</td>
<td>San Juan (WA)</td>
<td></td>
</tr>
<tr>
<td>Nooksack</td>
<td>17110004</td>
<td>Skagit (WA), Whatcom (WA)</td>
<td></td>
</tr>
<tr>
<td>Upper Skagit</td>
<td>17110005</td>
<td>Skagit (WA), Whatcom (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Skagit</td>
<td>17110006</td>
<td>Snohomish (WA), Skagit (WA)</td>
<td></td>
</tr>
<tr>
<td>Stillaguamish</td>
<td>17110007</td>
<td>Skagit (WA), Snohomish (WA)</td>
<td></td>
</tr>
<tr>
<td>Skykomish</td>
<td>17110008</td>
<td>Snohomish (WA), Skagit (WA)</td>
<td></td>
</tr>
<tr>
<td>Snoqualmie</td>
<td>17110009</td>
<td>King (WA), Snohomish (WA)</td>
<td>Tolt Dam</td>
</tr>
<tr>
<td>Snohomish</td>
<td>17110010</td>
<td>Snohomish (WA)</td>
<td></td>
</tr>
<tr>
<td>Lake Washington</td>
<td>17110012</td>
<td>King (WA), Snohomish (WA)</td>
<td>Landsburg Diversion</td>
</tr>
<tr>
<td>Duwamish</td>
<td>17110013</td>
<td>King (WA)</td>
<td></td>
</tr>
<tr>
<td>Puyallup</td>
<td>17110014</td>
<td>King (WA), Pierce (WA)</td>
<td>Alder Dam</td>
</tr>
<tr>
<td>Nisqually</td>
<td>17110015</td>
<td>Pierce (WA), Thurston (WA)</td>
<td></td>
</tr>
<tr>
<td>Deschutes</td>
<td>17110016</td>
<td>Lewis (WA), Thurston (WA)</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

2 Tribal lands are specifically excluded from critical habitat for this ESU.

[64 FR 21061, May 5, 1999]
TABLE 7 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR PUGET SOUND CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.—Continued

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skokomish</td>
<td>17110017</td>
<td>Grays Harbor (WA), Jefferson (WA), Mason (WA), Clallam (WA), Jefferson (WA), Kitsap (WA), Mason (WA).</td>
<td></td>
</tr>
<tr>
<td>Hood Canal</td>
<td>17110018</td>
<td>Island (WA), Jefferson (WA), King (WA), Kitsap (WA), Mason (WA), Pierce (WA), Skagit (WA), Snohomish (WA), Thurston (WA).</td>
<td></td>
</tr>
<tr>
<td>Puget Sound</td>
<td>17110019</td>
<td>Clallam (WA), Jefferson (WA)</td>
<td></td>
</tr>
<tr>
<td>Dungeness-Elwha</td>
<td>17110020</td>
<td>Clallam (WA), Jefferson (WA)</td>
<td>Elwha Dam</td>
</tr>
</tbody>
</table>

*Some counties have very limited overlap with estuarine, riverine, and riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.*

[65 FR 7779, Feb. 16, 2000]

TABLE 8 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR LOWER COLUMBIA RIVER CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Middle Columbia-Hood</td>
<td>17070105</td>
<td>Hood River (OR), Klickitat (WA), Skamania (WA), Wasco (OR).</td>
<td>Condit Dam, The Dalles Dam</td>
</tr>
<tr>
<td>Lower Columbia-Sandy</td>
<td>17080001</td>
<td>Clackamas (OR), Clark (WA), Multnomah (OR), Skamania (WA).</td>
<td>Bull Run Dam 2</td>
</tr>
<tr>
<td>Lewis</td>
<td>17080002</td>
<td>Clark (WA), Cowitz (WA), Skamania (WA).</td>
<td>Menwin Dam</td>
</tr>
<tr>
<td>Lower Columbia-Clatskanie</td>
<td>17080003</td>
<td>Clatsop (OR), Columbia (OR), Cowitz (WA), Lewis (WA), Skamania (WA), Wahkiakum (WA).</td>
<td></td>
</tr>
<tr>
<td>Upper Cowlitz</td>
<td>17080004</td>
<td>Lewis (WA), Pierce (WA), Skamania (WA), Yakima (WA).</td>
<td></td>
</tr>
<tr>
<td>Lower Cowlitz</td>
<td>17080005</td>
<td>Cowitz (WA), Lewis (WA), Skamania (WA).</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Clatsop (OR), Pacific (WA), Wahkiakum (WA).</td>
<td></td>
</tr>
<tr>
<td>Clackamas</td>
<td>17090011</td>
<td>Clackamas (OR), Marion (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Willamette</td>
<td>17090012</td>
<td>Clackamas (OR), Columbia (OR), Multnomah (OR), Washington (OR)</td>
<td></td>
</tr>
</tbody>
</table>

*Some counties have very limited overlap with estuarine, riverine, and riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.*

[65 FR 7780, Feb. 16, 2000]

TABLE 9 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR UPPER WILLAMETTE RIVER CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Columbia-Sandy</td>
<td>17080001</td>
<td>Clark (WA)</td>
<td>Cottage Grove Dam, Dorena Dam</td>
</tr>
<tr>
<td>Lower Columbia-Clatskanie</td>
<td>17080003</td>
<td>Clatsop (OR), Columbia (OR), Cowitz (WA), Wahkiakum (WA).</td>
<td>Fern Ridge Dam</td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Clatsop (OR), Pacific (WA), Wahkiakum (WA).</td>
<td></td>
</tr>
<tr>
<td>Middle Fork Willamette</td>
<td>17090001</td>
<td>Douglas (OR), Lane (OR)</td>
<td>Blue River Dam</td>
</tr>
<tr>
<td>Coast Fork Willamette</td>
<td>17090002</td>
<td>Douglas (OR), Lane (OR)</td>
<td></td>
</tr>
<tr>
<td>Upper Willamette</td>
<td>17090003</td>
<td>Benton (OR), Lane (OR), Lincoln (OR), Linn (OR), Polk (OR).</td>
<td></td>
</tr>
<tr>
<td>McKenzie</td>
<td>17090004</td>
<td>Lane (OR), Linn (OR)</td>
<td></td>
</tr>
</tbody>
</table>
Pt. 226, Table 10  50 CFR Ch. II (10–1–01 Edition)

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Santiam</td>
<td>17090005</td>
<td>Clackamas (OR), Linn (OR), Marion (OR),</td>
<td>Big Cliff Dam</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Linn (OR), Marion (OR), Polk (OR), Washington (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yamhill (OR), Washington (OR), Yamhill (OR).</td>
<td></td>
</tr>
<tr>
<td>South Santiam</td>
<td>17090006</td>
<td>Clackamas (OR), Marion (OR), Polk (OR),</td>
<td>Green Peter Dam</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington (OR), Yamhill (OR).</td>
<td></td>
</tr>
<tr>
<td>Middle Willamette</td>
<td>17090007</td>
<td>Clackamas (OR), Marion (OR), Polk (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington (OR), Yamhill (OR).</td>
<td></td>
</tr>
<tr>
<td>Yamhill</td>
<td>17090008</td>
<td>Lincoln (OR), Polk (OR), Tillamook (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yamhill (OR), Washington (OR), Yamhill (OR).</td>
<td></td>
</tr>
<tr>
<td>Molalla-Pudding</td>
<td>17090009</td>
<td>Clackamas (OR), Marion (OR),</td>
<td></td>
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<tr>
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<td>Clackamas (OR), Columbia (OR), Polk (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Multnomah (OR), Tillamook (OR), Washington (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yamhill (OR).</td>
<td></td>
</tr>
<tr>
<td>Tualatin</td>
<td>17090010</td>
<td>Clackamas (OR), Marion (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Clackamas (OR), Columbia (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Multnomah (OR).</td>
<td></td>
</tr>
<tr>
<td>Clackamas</td>
<td>17090011</td>
<td>Clackamas (OR), Marion (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Clackamas (OR), Columbia (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Multnomah (OR).</td>
<td></td>
</tr>
<tr>
<td>Lower Willamette</td>
<td>17090012</td>
<td>Clackamas (OR), Marion (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Clackamas (OR), Columbia (OR),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Multnomah (OR).</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, and riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7780, Feb. 16, 2000]

Table 10 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Upper Columbia River Spring-run Chinook Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat:

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Joseph</td>
<td>17020005</td>
<td>Chelan (WA), Douglas (WA), Okanogan (WA).</td>
<td>Chief Joseph</td>
</tr>
<tr>
<td>Similkameen</td>
<td>17020007</td>
<td>Okanogan (WA)</td>
<td></td>
</tr>
<tr>
<td>Methow</td>
<td>17020008</td>
<td>Okanogan (WA)</td>
<td></td>
</tr>
<tr>
<td>Upper Columbia-Entiat</td>
<td>17020010</td>
<td>Chelan (WA), Douglas (WA), Grant (WA), Kittitas (WA).</td>
<td></td>
</tr>
<tr>
<td>Wenatchee</td>
<td>17020011</td>
<td>Chelan (WA)</td>
<td></td>
</tr>
<tr>
<td>Upper Columbia-Priest Rapids</td>
<td>17020016</td>
<td>Benton (WA), Grant (WA), Franklin (WA), Kittitas (WA), Yakima (WA).</td>
<td></td>
</tr>
<tr>
<td>Middle Columbia-Lake Wallula</td>
<td>17070101</td>
<td>Benton (WA), Gilliam (OR), Klickitat (WA), Morrow (OR), Sherman (OR), Umatilla (OR), Walla Walla (WA).</td>
<td></td>
</tr>
<tr>
<td>Middle Columbia-Hood</td>
<td>17070105</td>
<td>Hood River (OR), Klickitat (WA), Sherman (OR), Skamania (WA), Wasco (OR).</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia-Sandy</td>
<td>17080001</td>
<td>Clark (WA), Multnomah (OR), Skamania (WA).</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia-Clatskanie</td>
<td>17080003</td>
<td>Clatsop (OR), Columbia (OR), Cow-litz (WA), Wahkiakum (WA).</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Clatsop (OR), Pacific (WA), Wahkiakum (WA),</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Columbia (OR), Multnomah (OR)</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, and riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7781, Feb. 16, 2000]

Table 11 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Central Valley California Spring-run Chinook Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat:

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sacramento-Lower Cow-Lower Clear</td>
<td>18020101</td>
<td>Shasta (CA), Tehama (CA)</td>
<td></td>
</tr>
</tbody>
</table>
### TABLE 11 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL VALLEY CALIFORNIA SPRING-RUN CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.—Continued

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Cottonwood</td>
<td>18020102</td>
<td>Shasta (CA), Tehama (CA)</td>
<td>Black Butte Dam</td>
</tr>
<tr>
<td>Sacramento-Lower Thames</td>
<td>18020103</td>
<td>Butte (CA), Glenn (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Sacramento-Stone Corral</td>
<td>18020104</td>
<td>Butte (CA), Colusa (CA), Glenn (CA), Sutter (CA), Yolo (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Butte</td>
<td>18020105</td>
<td>Butte (CA), Colusa (CA), Glenn (CA), Sutter (CA)</td>
<td>Centerville Dam</td>
</tr>
<tr>
<td>Lower Feather</td>
<td>18020106</td>
<td>Butte (CA), Sutter (CA), Yuba (CA)</td>
<td>Oroville Dam</td>
</tr>
<tr>
<td>Lower Yuba</td>
<td>18020107</td>
<td>Yuba (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Bear</td>
<td>18020108</td>
<td>Placer (CA), Sutter (CA), Yuba (CA)</td>
<td>Camp Far West Dam</td>
</tr>
<tr>
<td>Lower Sacramento</td>
<td>18020109</td>
<td>Sacramento (CA), Solano (CA), Sutter (CA), Placer (CA), Yolo (CA)</td>
<td></td>
</tr>
<tr>
<td>Sacramento-Upper Clear</td>
<td>18020112</td>
<td>Shasta (CA)</td>
<td>Keswick Dam, Whiskeytown Dam</td>
</tr>
<tr>
<td>Upper Elder-Upper Thames</td>
<td>18020114</td>
<td>Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Upper Cow-Battle</td>
<td>18020118</td>
<td>Shasta (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Mill-Big Chico</td>
<td>18020119</td>
<td>Butte (CA), Shasta (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Upper Butte</td>
<td>18020120</td>
<td>Butte (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Upper Yuba</td>
<td>18020125</td>
<td>Nevada (CA), Yuba (CA)</td>
<td>Englbreight Dam</td>
</tr>
<tr>
<td>Suisun Bay</td>
<td>18050001</td>
<td>Contra Costa (CA), Napa (CA), Solano (CA)</td>
<td></td>
</tr>
<tr>
<td>San Pablo Bay</td>
<td>18050002</td>
<td>Alameda (CA), Contra Costa (CA), Marin (CA), Napa (CA), San Mateo (CA), Solano (CA), Sonoma (CA)</td>
<td>Coyote Dam, Warm Springs Dam</td>
</tr>
<tr>
<td>San Francisco Bay</td>
<td>18050004</td>
<td>Alameda (CA), Contra Costa (CA), Marin (CA), San Francisco (CA), San Mateo (CA)</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, and riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7781, Feb. 16, 2000]

### TABLE 12 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CALIFORNIA COASTAL CHINOOK SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mad-Redwood</td>
<td>18010102</td>
<td>Humboldt (CA), Trinity (CA)</td>
<td>Scott Dam</td>
</tr>
<tr>
<td>Upper Eel</td>
<td>18010103</td>
<td>Glenn (CA), Lake (CA), Mendocino (CA), Trinity (CA)</td>
<td></td>
</tr>
<tr>
<td>Middle Fork Eel</td>
<td>18010104</td>
<td>Humboldt (CA), Mendocino (CA), Trinity (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Eel</td>
<td>18010105</td>
<td>Humboldt (CA), Mendocino (CA)</td>
<td></td>
</tr>
<tr>
<td>South Fork Eel</td>
<td>18010106</td>
<td>Humboldt (CA), Mendocino (CA)</td>
<td></td>
</tr>
<tr>
<td>Mattole</td>
<td>18010107</td>
<td>Humboldt (CA), Mendocino (CA)</td>
<td></td>
</tr>
<tr>
<td>Big-Navarro-Garcia</td>
<td>18010108</td>
<td>Mendocino (CA)</td>
<td></td>
</tr>
<tr>
<td>Gualala-Salmon</td>
<td>18010109</td>
<td>Mendocino (CA), Sonoma (CA)</td>
<td></td>
</tr>
<tr>
<td>Russian</td>
<td>18010110</td>
<td>Mendocino (CA), Sonoma (CA)</td>
<td></td>
</tr>
<tr>
<td>Bodega Bay</td>
<td>18010111</td>
<td>Marin (CA), Sonoma (CA)</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, and riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7782, Feb. 16, 2000]
### Table 13 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Hood Canal Summer-run Chum Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties/ within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skokomish</td>
<td>17110017</td>
<td>Mason (WA)</td>
<td>Cushman Dam</td>
</tr>
<tr>
<td>Hood Canal</td>
<td>17110018</td>
<td>Clallam (WA), Jefferson (WA), Mason (WA), Kitsap (WA), Island (WA), Jefferson (WA), Kitsap (WA)</td>
<td></td>
</tr>
<tr>
<td>Puget Sound</td>
<td>17110019</td>
<td>Clallam (WA), Jefferson (WA)</td>
<td></td>
</tr>
<tr>
<td>Dungeness-Eliwha</td>
<td>17110020</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7782, Feb. 16, 2000]

### Table 14 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Columbia River Chum Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties/ within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Columbia - Sandy</td>
<td>17080001</td>
<td>Clark (WA), Skamania (WA), Multnomah (OR), Cowlitz (WA), Clark (WA), Skamania (WA)</td>
<td>Bonneville Dam</td>
</tr>
<tr>
<td>Lewis</td>
<td>17080002</td>
<td>Cowlitz (WA), Lewis (WA), Skamania (WA)</td>
<td>Menlo Dam</td>
</tr>
<tr>
<td>Lower Columbia - Clatskanie</td>
<td>17080003</td>
<td>Wahkiakum (WA), Lewis (WA), Skamania (WA), Clatsop (OR), Columbia (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Cowlitz</td>
<td>17080005</td>
<td>Cowlitz (WA), Lewis (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Pacific (WA), Wahkiakum (WA), Lewis (WA), Clatsop (OR), Columbia (OR), Washington (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Willamette</td>
<td>17090012</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7782, Feb. 16, 2000]

### Table 15 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Oregon Coast Coho Salmon, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties/ within Hydrologic Unit and within the range of ESU*</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Necanicum</td>
<td>17100021</td>
<td>Clatsop (OR), Tillamook (OR), Lincoln (OR), Polk (OR), Tillamook (OR), Washington (OR), Yamhill (OR)</td>
<td>McGuire Dam</td>
</tr>
<tr>
<td>Nehalem</td>
<td>17100022</td>
<td>Clatsop (OR), Columbia (OR), Tillamook (OR), Washington (OR), Lincoln (OR), Polk (OR), Tillamook (OR), Washington (OR), Yamhill (OR)</td>
<td></td>
</tr>
<tr>
<td>Wilson-Trask-Nestucca</td>
<td>17100023</td>
<td>Lincoln (OR), Polk (OR), Tillamook (OR), Washington (OR), Yamhill (OR)</td>
<td></td>
</tr>
<tr>
<td>Siletz-Yaquina</td>
<td>17100024</td>
<td>Benton (OR), Lincoln (OR), Polk (OR), Tillamook (OR)</td>
<td></td>
</tr>
<tr>
<td>Alsea</td>
<td>17100025</td>
<td>Benton (OR), Lane (OR), Lincoln (OR), Polk (OR)</td>
<td></td>
</tr>
<tr>
<td>Siuslaw</td>
<td>17100026</td>
<td>Benton (OR), Douglas (OR), Lane (OR), Polk (OR)</td>
<td></td>
</tr>
<tr>
<td>Siltcoos</td>
<td>17100027</td>
<td>Douglas (OR), Lane (OR), Polk (OR)</td>
<td>Cooper Creek Dam, Soda Springs Dam</td>
</tr>
<tr>
<td>North Umpqua</td>
<td>17100031</td>
<td>Douglas (OR), Lane (OR), Polk (OR)</td>
<td>Ben Irving Dam, Galesville Dam, Win Walker Reservoir</td>
</tr>
<tr>
<td>South Umpqua</td>
<td>17100032</td>
<td>Coos (OR), Douglas (OR), Josephine (OR)</td>
<td></td>
</tr>
<tr>
<td>Umpqua</td>
<td>17100033</td>
<td>Coos (OR), Douglas (OR), Lane (OR), Josephine (OR)</td>
<td></td>
</tr>
<tr>
<td>Coos</td>
<td>17100034</td>
<td>Coos (OR), Douglas (OR), Lane (OR), Josephine (OR)</td>
<td>Lower Pony Creek Dam</td>
</tr>
</tbody>
</table>
TABLE 15 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR OREGON COAST COHO SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.—Continued

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within the range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coquille</td>
<td>17100305</td>
<td>Coos (OR), Curry (OR), Douglas (OR)</td>
<td></td>
</tr>
<tr>
<td>Sixes</td>
<td>17100306</td>
<td>Coos (OR), Curry (OR)</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7782, Feb. 16, 2000]

TABLE 16 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SOUTHERN CALIFORNIA STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cuyama</td>
<td>18060007</td>
<td>San Luis Obispo (CA), Santa Barbara (CA)</td>
<td>Vaquero Dam</td>
</tr>
<tr>
<td>Santa Maria</td>
<td>18060008</td>
<td>San Luis Obispo (CA), Santa Barbara (CA)</td>
<td></td>
</tr>
<tr>
<td>San Antonio</td>
<td>18060009</td>
<td>Santa Barbara (CA)</td>
<td>Bradbury Dam</td>
</tr>
<tr>
<td>Santa Ynez</td>
<td>18060010</td>
<td>Santa Barbara (CA), Ventura (CA)</td>
<td></td>
</tr>
<tr>
<td>Santa Barbara Coastal</td>
<td>18060013</td>
<td>Santa Barbara (CA), Ventura (CA)</td>
<td></td>
</tr>
<tr>
<td>Ventura</td>
<td>18070101</td>
<td>Santa Barbara (CA), Ventura (CA)</td>
<td>Casitas Dam, Robles Dam</td>
</tr>
<tr>
<td>Santa Clara</td>
<td>18070102</td>
<td>Los Angeles (CA), Santa Barbara (CA), Ventura (CA)</td>
<td>Santa Felicia Dam</td>
</tr>
<tr>
<td>Santa Monica Bay</td>
<td>18070104</td>
<td>Los Angeles (CA), Ventura (CA)</td>
<td>Rindge Dam</td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7783, Feb. 16, 2000]

TABLE 17 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SOUTH-CENTRAL CALIFORNIA COAST STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pajaro</td>
<td>18060002</td>
<td>Monterey (CA), San Benito (CA), Santa Clara (CA), Santa Cruz (CA)</td>
<td>Chesbro Reservoir, North Fork Pacheco Reservoir</td>
</tr>
<tr>
<td>Estrella</td>
<td>18060004</td>
<td>Monterey (CA), San Luis Obispo (CA)</td>
<td></td>
</tr>
<tr>
<td>Salinas</td>
<td>18060005</td>
<td>Monterey (CA), San Benito (CA), San Luis Obispo (CA)</td>
<td></td>
</tr>
<tr>
<td>Central Coastal</td>
<td>18060006</td>
<td>Monterey (CA), San Luis Obispo (CA)</td>
<td></td>
</tr>
<tr>
<td>Alisal-Ekholm Sloughs</td>
<td>18060011</td>
<td>Monterey (CA), San Benito (CA)</td>
<td></td>
</tr>
<tr>
<td>Carmel</td>
<td>18060012</td>
<td>Monterey (CA)</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7783, Feb. 16, 2000]
### TABLE 18 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL CALIFORNIA COAST STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russian</td>
<td>18010110</td>
<td>Mendocino (CA), Sonoma (CA)</td>
<td>Coyote Dam, Warm Springs Dam</td>
</tr>
<tr>
<td>Bodega Bay</td>
<td>18010111</td>
<td>Marin (CA), Sonoma (CA)</td>
<td>Phoenix Dam, San Pablo Dam</td>
</tr>
<tr>
<td>Suisun Bay</td>
<td>18050001</td>
<td>Contra Costa (CA), Napa (CA), Solano (CA)</td>
<td>Almaden Reservoir, Anderson Reservoir, Calero Reservoir, Guadalupe Reservoir, Searsville Lake, Stevens Creek Reservoir, Vasona Reservoir</td>
</tr>
<tr>
<td>San Pablo Bay</td>
<td>18050002</td>
<td>Alameda (CA), Contra Costa (CA), Marin (CA), Napa (CA), San Francisco (CA), Solano (CA), Sonoma (CA)</td>
<td>Calaveras Reservoir, Chabot Dam, Crystal Springs Reservoir, Del Valle Reservoir, San Antonio Reservoir</td>
</tr>
<tr>
<td>Coyote</td>
<td>18050003</td>
<td>Alameda (CA), San Mateo (CA), Santa Clara (CA)</td>
<td>Peters Dam, Seeger Dam, Souleque Dam</td>
</tr>
</tbody>
</table>
| San Francisco Bay    | 18050004               | Alameda (CA), Contra Costa (CA), San Francisco (CA), San Mateo (CA), Santa Clara (CA) | Galveston Dam |}

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

### TABLE 19 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL VALLEY STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sacramento-Lower Cow-Lower Clear</td>
<td>18020101</td>
<td>Shasta (CA), Tehama (CA)</td>
<td>Black Butte Dam</td>
</tr>
<tr>
<td>Lower Cottonwood</td>
<td>18020102</td>
<td>Shasta (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Sacramento-Lower Thomas</td>
<td>18020103</td>
<td>Butte (CA), Glenn (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Sacramento-Stone Corral</td>
<td>18020104</td>
<td>Butte (CA), Colusa (CA), Glenn (CA), Sutter (CA), Yolo (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Butte</td>
<td>18020105</td>
<td>Butte (CA), Colusa (CA), Glenn (CA), Sutter (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Feather</td>
<td>18020106</td>
<td>Butte (CA), Sutter (CA), Yuba (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Yuba</td>
<td>18020107</td>
<td>Yuba (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Bear</td>
<td>18020108</td>
<td>Placer (CA), Sutter (CA), Yuba (CA)</td>
<td>Camp Far West Dam</td>
</tr>
<tr>
<td>Lower Sacramento</td>
<td>18020109</td>
<td>Placer (CA), Sacramento (CA), Solano (CA), Sutter (CA), Yolo (CA)</td>
<td>Monticello Dam</td>
</tr>
<tr>
<td>Lower Cache</td>
<td>18020110</td>
<td>Yolo (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower American</td>
<td>18020111</td>
<td>Placer (CA), Sacramento (CA), Sutter (CA)</td>
<td>Nimbus Dam</td>
</tr>
<tr>
<td>Sacramento-Upper Clear</td>
<td>18020112</td>
<td>Shasta (CA)</td>
<td>Keswick Dam, Whiskeytown Dam</td>
</tr>
<tr>
<td>Cottonwood Headwaters</td>
<td>18020113</td>
<td>Shasta (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Upstream Elder-Upper Thames</td>
<td>18020114</td>
<td>Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Upper Cow-Battle</td>
<td>18020118</td>
<td>Shasta (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Mill Big Chico</td>
<td>18020119</td>
<td>Butte (CA), Shasta (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Upper Butte</td>
<td>18020120</td>
<td>Butte (CA), Tehama (CA)</td>
<td></td>
</tr>
<tr>
<td>Honcut Headwaters</td>
<td>18020124</td>
<td>Butte (CA), Yuba (CA)</td>
<td>Englebright Dam</td>
</tr>
<tr>
<td>Upper Yuba</td>
<td>18020125</td>
<td>Yuba (CA), Nevada (CA)</td>
<td>Crocker Diversion Dam, La Grange Dam</td>
</tr>
<tr>
<td>Upper Coon-Upper Auburn</td>
<td>18020127</td>
<td>Placer (CA)</td>
<td></td>
</tr>
<tr>
<td>Middle San Joaquin-Lower Merced-Lower Stanislaus</td>
<td>18040002</td>
<td>Calaveras (CA), Merced (CA), San Joaquin (CA), Stanislaus (CA).</td>
<td></td>
</tr>
<tr>
<td>San Joaquin Delta</td>
<td>18040003</td>
<td>Alameda (CA), Contra Costa (CA), Sacramento (CA), San Joaquin (CA)</td>
<td></td>
</tr>
<tr>
<td>Lower Calaveras-Mormon Slough</td>
<td>18040004</td>
<td>Calaveras (CA), San Joaquin (CA), Stanislaus (CA)</td>
<td></td>
</tr>
</tbody>
</table>
### TABLE 19 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL VALLEY STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.—Continued

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Consumnes-Lower Mokelumne</td>
<td>18040005</td>
<td>Amador (CA), Sacramento (CA), San Joaquin (CA), Tuolumne (CA)</td>
<td>Comanche Dam</td>
</tr>
<tr>
<td>Upper Stanislaus</td>
<td>18040010</td>
<td>Calaveras (CA), San Joaquin (CA), Tuolumne (CA)</td>
<td>Goodwin Dam</td>
</tr>
<tr>
<td>Upper Calaveras</td>
<td>18040011</td>
<td>Contra Costa (CA), Marin (CA), San Francisco (CA), Solano (CA), Sonoma (CA)</td>
<td>New Hogan Dam</td>
</tr>
<tr>
<td>Panoche-San Luis Reservoir</td>
<td>18050004</td>
<td>Alameda (CA), Contra Costa (CA), San Francisco (CA), San Mateo (CA)</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

### TABLE 20 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR UPPER COLUMBIA RIVER STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Joseph</td>
<td>17020005</td>
<td>Chelan (WA), Douglas (WA), Okanogan (WA)</td>
<td>Chief Joseph Dam</td>
</tr>
<tr>
<td>Okanogan</td>
<td>17020006</td>
<td>Okanogan (WA)</td>
<td></td>
</tr>
<tr>
<td>Similkameen</td>
<td>17020007</td>
<td>Okanogan (WA)</td>
<td></td>
</tr>
<tr>
<td>Methow</td>
<td>17020008</td>
<td>Okanogan (WA)</td>
<td></td>
</tr>
<tr>
<td>Upper Columbia-Entiat</td>
<td>17020010</td>
<td>Chelan (WA), Douglas (WA), Grant (WA), Kittitas (WA)</td>
<td></td>
</tr>
<tr>
<td>Wenatchee</td>
<td>17020011</td>
<td>Chelan (WA), Grant (WA)</td>
<td></td>
</tr>
<tr>
<td>Moses Coulee</td>
<td>17020012</td>
<td>Douglas (WA), Grant (WA)</td>
<td></td>
</tr>
<tr>
<td>Upper Columbia-Priest Rapids</td>
<td>17020016</td>
<td>Benton (WA), Franklin (WA), Grant (WA), Kittitas (WA), Yakima (WA)</td>
<td></td>
</tr>
<tr>
<td>Middle Columbia-Lake Wallula</td>
<td>17070101</td>
<td>Benton (WA), Gilliam (OR), Klickitat (WA), Morrow (OR), Sherman (OR), Umatilla (OR), Walla Walla (WA)</td>
<td></td>
</tr>
<tr>
<td>Middle Columbia-Hood</td>
<td>17070105</td>
<td>Hood River (OR), Klickitat (WA), Sherman (OR), Skamania (WA), Wasco (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia-Sandy</td>
<td>17080001</td>
<td>Clark (WA), Multnomah (OR), Skamania (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia-Clatskanie</td>
<td>17080003</td>
<td>Clatsop (OR), Columbia (WA), Cowitz (WA), Wahkiakum (WA), Wahkiakum (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Clatsop (OR), Pacific (WA), Wahkiakum (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Willamette</td>
<td>17090012</td>
<td>Columbia (OR), Multnomah (OR)</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

(65 FR 7784, Feb. 16, 2000)
## Table 21 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Snake River Basin Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties/ within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hells Canyon</td>
<td>17060101</td>
<td>Adams (ID), Idaho (ID), Wallowa (OR)</td>
<td>Hells Canyon Dam</td>
</tr>
<tr>
<td>Imnaha</td>
<td>17060102</td>
<td>Baker (OR), Union (OR), Wallowa (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Snake-Asotin</td>
<td>17060103</td>
<td>Asotin (WA), Garfield (WA), Nez Perce (ID), Wallowa (OR)</td>
<td></td>
</tr>
<tr>
<td>Upper Grande Ronde</td>
<td>17060104</td>
<td>Umatilla (OR), Union (OR), Wallowa (OR)</td>
<td></td>
</tr>
<tr>
<td>Wallowa</td>
<td>17060105</td>
<td>Union (OR), Wallowa (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Grande Ronde</td>
<td>17060106</td>
<td>Asotin (WA), Columbia (WA), Garfield (WA), Union (OR), Wallowa (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Snake-Tucannon</td>
<td>17060107</td>
<td>Asotin (WA), Columbia (WA), Garfield (WA), Whitman (WA)</td>
<td></td>
</tr>
<tr>
<td>Palouse</td>
<td>17060108</td>
<td>Franklin (WA), Whitman (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Snake</td>
<td>17060110</td>
<td>Columbia (WA), Franklin (WA), Walla Walla (WA)</td>
<td></td>
</tr>
<tr>
<td>Upper Salmon</td>
<td>17060201</td>
<td>Blaine (ID), Custer (ID), Lemhi (ID)</td>
<td></td>
</tr>
<tr>
<td>Pahsimeroi</td>
<td>17060202</td>
<td>Custer (ID), Lemhi (ID)</td>
<td></td>
</tr>
<tr>
<td>Middle Salmon-Panther</td>
<td>17060203</td>
<td>Custer (ID), Lemhi (ID)</td>
<td></td>
</tr>
<tr>
<td>Lemhi</td>
<td>17060204</td>
<td>Lemhi (ID)</td>
<td></td>
</tr>
<tr>
<td>Upper Middle Fork Salmon</td>
<td>17060205</td>
<td>Boise (ID), Custer (ID), Lemhi (ID), Valley (ID)</td>
<td></td>
</tr>
<tr>
<td>Lower Middle Fork Salmon</td>
<td>17060206</td>
<td>Idaho (ID), Lemhi (ID), Valley (ID)</td>
<td></td>
</tr>
<tr>
<td>Middle Salmon-Chamberlain</td>
<td>17060207</td>
<td>Idaho (ID), Lemhi (ID), Valley (ID)</td>
<td></td>
</tr>
<tr>
<td>South Fork Salmon</td>
<td>17060208</td>
<td>Idaho (ID), Valley (ID)</td>
<td></td>
</tr>
<tr>
<td>Lower Salmon</td>
<td>17060209</td>
<td>Idaho (ID), Lewis (ID), Nez Perce (ID)</td>
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</tr>
<tr>
<td>Little Salmon</td>
<td>17060210</td>
<td>Adams (ID), Idaho (ID)</td>
<td></td>
</tr>
<tr>
<td>Upper Selway</td>
<td>17060301</td>
<td>Idaho (ID)</td>
<td></td>
</tr>
<tr>
<td>Lower Selway</td>
<td>17060302</td>
<td>Idaho (ID)</td>
<td></td>
</tr>
<tr>
<td>Lochsa</td>
<td>17060303</td>
<td>Clearwater (ID), Idaho (ID)</td>
<td></td>
</tr>
<tr>
<td>Middle Fork Clearwater</td>
<td>17060304</td>
<td>Idaho (ID)</td>
<td></td>
</tr>
<tr>
<td>South Fork Clearwater</td>
<td>17060305</td>
<td>Idaho (ID)</td>
<td></td>
</tr>
<tr>
<td>Clearwater</td>
<td>17060306</td>
<td>Clearwater (ID), Idaho (ID), Latah (ID), Lewis (ID), Nez Perce (ID), Whitman (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower North Fork Clearwater</td>
<td>17060308</td>
<td>Clearwater (ID)</td>
<td>Dworshak Dam</td>
</tr>
<tr>
<td>Middle Columbia-Lake Wallula</td>
<td>17070101</td>
<td>Benton (WA), Gilliam (OR), Klickitat (WA), Morrow (OR), Sherman (OR), Umatilla (OR), Walla Walla (WA)</td>
<td></td>
</tr>
<tr>
<td>Middle Columbia-Hood</td>
<td>17070105</td>
<td>Hood River (OR), Klickitat (WA), Sherman (OR), Skamania (WA), Wasco (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia-Sandy</td>
<td>17080001</td>
<td>Clark (WA), Multnomah (OR), Skamania (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia-Clatskanie</td>
<td>17080003</td>
<td>Clatsop (OR), Columbia (WA), Cowitz (WA), Wahkiakum (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Clatsop (OR), Pacific (WA), Wahkiakum (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Willamette</td>
<td>17090012</td>
<td>Columbia (OR), Multnomah (OR)</td>
<td></td>
</tr>
</tbody>
</table>

*Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU.
Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

(65 FR 7785, Feb. 16, 2000)

## Table 22 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Lower Columbia River Steelhead, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties/ within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Middle Columbia-Hood</td>
<td>17070105</td>
<td>Hood River (OR), Skamania (WA)</td>
<td></td>
</tr>
</tbody>
</table>

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TABLE 22 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR LOWER COLUMBIA RIVER STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.—Continued

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Columbia-Sandy</td>
<td>17080001</td>
<td>Clackamas (OR), Clark (WA), Multnomah (OR), Skamania (WA), Clark (WA), Cowitz (WA), Skamania (WA), Wahkiakum (WA).</td>
<td>Bull Run Dam</td>
</tr>
<tr>
<td>Lewis</td>
<td>17080002</td>
<td>Clackamas (OR), Columbia (OR), Cowitz (WA), Skamania (WA), Wahkiakum (WA).</td>
<td>Mevin Dam</td>
</tr>
<tr>
<td>Lower Columbia-Clatskanie</td>
<td>17080003</td>
<td>Clattsp (OR), Columbia (OR), Cowitz (WA), Skamania (WA), Wahkiakum (WA).</td>
<td></td>
</tr>
<tr>
<td>Lower Cowlitz</td>
<td>17080005</td>
<td>Cowitz (WA), Lewis (WA), Skamania (WA).</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Clattsp (OR), Pacific (WA), Wahkiakum (WA).</td>
<td></td>
</tr>
<tr>
<td>Clackamas</td>
<td>17090011</td>
<td>Clackamas (OR), Marion (OR).</td>
<td></td>
</tr>
<tr>
<td>Lower Willamette</td>
<td>17090012</td>
<td>Clackamas (OR), Columbia (OR), Multnomah (OR), Washington (OR).</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7786, Feb. 16, 2000]

TABLE 23 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR UPPER WILLAMETTE RIVER STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT:

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Columbia-Sandy</td>
<td>17080001</td>
<td>Clark (WA), Linn (OR), Polk (OR).</td>
<td>Big Cliff Dam</td>
</tr>
<tr>
<td>Lower Columbia-Clatskanie</td>
<td>17080003</td>
<td>Clattsp (OR), Columbia (OR), Cowitz (WA), Wahkiakum (WA).</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Clattsp (OR), Pacific (WA), Wahkiakum (WA).</td>
<td></td>
</tr>
<tr>
<td>Upper Willamette</td>
<td>17090003</td>
<td>Clackamas (OR), Marion (OR), Polk (OR), Washington (OR), Yamhill (OR).</td>
<td></td>
</tr>
<tr>
<td>North Santiam</td>
<td>17090005</td>
<td>Clackamas (OR), Linn (OR), Marion (OR).</td>
<td>Green Peter Dam</td>
</tr>
<tr>
<td>South Santiam</td>
<td>17090006</td>
<td>Linn (OR).</td>
<td></td>
</tr>
<tr>
<td>Middle Willamette</td>
<td>17090007</td>
<td>Clackamas (OR), Marion (OR), Polk (OR), Washington (OR), Yamhill (OR).</td>
<td></td>
</tr>
<tr>
<td>Yamhill</td>
<td>17090008</td>
<td>Lincoln (OR), Polk (OR), Tillamook (OR), Yamhill (OR).</td>
<td></td>
</tr>
<tr>
<td>Molalla-Pudding</td>
<td>17090009</td>
<td>Clackamas (OR), Marion (OR), Multnomah (OR), Tillamook (OR),</td>
<td></td>
</tr>
<tr>
<td>Tuatuline</td>
<td>17090010</td>
<td>Clackamas (OR), Columbia (OR), Multnomah (OR), Tillamook (OR), Washington (OR), Yamhill (OR), Clackamas (OR), Columbia (OR), Multnomah (OR).</td>
<td></td>
</tr>
<tr>
<td>Lower Willamette</td>
<td>17090012</td>
<td>Clackamas (OR), Columbia (OR), Multnomah (OR).</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7786, Feb. 16, 2000]

TABLE 24 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR MIDDLE COLUMBIA RIVER STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper Columbia-Priest Rapids</td>
<td>17020016</td>
<td>Benton (WA), Franklin (WA), Kittitas (WA), Yakima (WA).</td>
<td></td>
</tr>
<tr>
<td>Upper Yakima</td>
<td>17030001</td>
<td>Kittitas (WA), Yakima (WA).</td>
<td></td>
</tr>
<tr>
<td>Naches</td>
<td>17030002</td>
<td>Kittitas (WA), Yakima (WA).</td>
<td></td>
</tr>
</tbody>
</table>

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### TABLE 24 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR MIDDLE COLUMBIA RIVER STEELHEAD, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT.—Continued

<table>
<thead>
<tr>
<th>Hydrologic Unit name</th>
<th>Hydrologic Unit number</th>
<th>Counties within Hydrologic Unit and within range of ESU</th>
<th>Dams/Reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Yakima</td>
<td>17030003</td>
<td>Benton (WA), Klickitat (WA), Yakima (WA), Wasco (OR), Grant (OR), Harney (OR), Wheeler (OR)</td>
<td></td>
</tr>
<tr>
<td>Middle Columbia-Lake Wallula</td>
<td>17070101</td>
<td>Gilliam (OR), Morrow (OR), Umatilla (OR), Sherman (OR), Wasco (OR), Klickitat (WA), Yakima (WA)</td>
<td></td>
</tr>
<tr>
<td>Walla Walla</td>
<td>17070102</td>
<td>Umatilla (OR), Walla Walla (WA), Columbia (WA), Yakima (WA), Skamania (WA)</td>
<td></td>
</tr>
<tr>
<td>Umatilla</td>
<td>17070103</td>
<td>Morrow (OR), Umatilla (OR), Union (OR), Sherman (OR), Yakima (WA)</td>
<td></td>
</tr>
<tr>
<td>Willow</td>
<td>17070104</td>
<td>Morrow (OR), Gilliam (OR), Yakima (WA), Klickitat (WA)</td>
<td></td>
</tr>
<tr>
<td>Middle Columbia-Hood</td>
<td>17070105</td>
<td>Hood River (OR), Sherman (OR), Wasco (OR), Klickitat (WA), Skamania (WA)</td>
<td></td>
</tr>
<tr>
<td>Klickitat</td>
<td>17070106</td>
<td>Klickitat (WA), Yakima (WA)</td>
<td></td>
</tr>
<tr>
<td>Upper John Day</td>
<td>17070201</td>
<td>Crook (OR), Grant (OR), Harney (OR), Wheeler (OR)</td>
<td></td>
</tr>
<tr>
<td>North Fork John Day</td>
<td>17070202</td>
<td>Grant (OR), Morrow (OR), Umatilla (OR), Union (OR), Wheeler (OR)</td>
<td></td>
</tr>
<tr>
<td>Middle Fork John Day</td>
<td>17070203</td>
<td>Grant (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower John Day</td>
<td>17070204</td>
<td>Crook (OR), Gilliam (OR), Grant (OR), Jefferson (OR), Morrow (OR), Sherman (OR), Wasco (OR), Wheeler (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Deschutes</td>
<td>17070306</td>
<td>Hood River (OR), Sherman (OR), Wasco (OR)</td>
<td></td>
</tr>
<tr>
<td>Trout</td>
<td>17070307</td>
<td>Crook (OR), Jefferson (OR), Wasco (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia-Sandy</td>
<td>17080001</td>
<td>Multnomah (OR), Clark (WA), Skamania (WA)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia-Clatskanie</td>
<td>17080003</td>
<td>Clatsop (OR), Columbia (WA), Cowlitz (WA), Wahkiakum (WA), Wahkiakum (WA), Columbia (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Columbia</td>
<td>17080006</td>
<td>Clatsop (OR), Pacific (WA), Wahkiakum (WA), Columbia (OR), Multnomah (OR)</td>
<td></td>
</tr>
<tr>
<td>Lower Willamette</td>
<td>17090012</td>
<td>Columbia (OR), Multnomah (OR)</td>
<td></td>
</tr>
</tbody>
</table>

* Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

[65 FR 7786, Feb. 16, 2000]

### PART 228—NOTICE AND HEARING ON SECTION 103(d) REGULATIONS

Sec. 228.1 Basis and purpose.
228.2 Definitions.
228.3 Scope of regulations.
228.4 Notice of hearing.
228.5 Notification by interested persons.
228.6 Presiding officer.
228.7 Direct testimony submitted as written documents.
228.8 Mailing address.
228.9 Inspection and copying of documents.
228.10 Ex parte communications.
228.11 Prehearing conference.
228.12 Final agenda of the hearing.
228.13 Determination to cancel the hearing.
228.14 Rebuttal testimony and new issues of fact in final agenda.
228.15 Waiver of right to participate.
228.16 Conduct of the hearing.
228.17 Direct testimony.
228.18 Cross-examination.
228.19 Oral and written arguments.
228.20 Recommended decision, certification of the transcript and submission of comments on the recommended decision.
228.21 Assistant Administrator’s decision.

**AUTHORITY:** 16 U.S.C. 1361 *et seq.*

**SOURCE:** 65 FR 39560, June 27, 2000, unless otherwise noted.

**§ 228.1 Basis and purpose.**

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Assistant Administrator of the National Marine Fisheries Service, to:
§ 228.5 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the Federal Register, together with the Assistant Administrator’s proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:
   (1) The nature of the hearing;
   (2) The place and date of the hearing.
   The date shall not be less than 60 days after publication of notice of the hearing;
   (3) The legal authority under which the hearing is to be held;
   (4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d);
   (5) Issues of fact which may be involved in the hearing;
   (6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;
   (7) Any written advice received from the Marine Mammal Commission;
   (8) The place(s) where records and submitted direct testimony will be kept for public inspection;
   (9) The final date for filing with the Assistant Administrator a notice of intent to participate in the hearing pursuant to §228.5;
   (10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;
   (11) The docket number assigned to the case which shall be used in all subsequent proceedings; and
   (12) The place and date of the prehearing conference.

§ 228.5 Notification by interested persons.

Any person desiring to participate as a party shall notify the Assistant Administrator, by certified mail, on or before the date specified in the notice.
§ 228.6 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to §228.4, the Assistant Administrator shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

1. Change the time and place of the hearing and adjourn the hearing;
2. Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;
3. Rule upon motions, requests and admissibility of direct testimony;
4. Administer oaths and affirmations, question witnesses and direct witnesses to testify;
5. Modify or waive any rule (after notice) when determining that no party will be prejudiced;
6. Receive written comments and hear oral arguments;
7. Render a recommended decision; and
8. Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or the original presiding officer’s inability to act, the powers and duties to be performed by the original presiding officer under this subpart in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Assistant Administrator.

(d) The presiding officer may upon the presiding officer’s own motion withdraw as presiding officer in a proceeding if the presiding officer deems himself or herself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer’s personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Assistant Administrator shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Assistant Administrator may deem appropriate in the circumstances.

§ 228.7 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§228.4), the final hearing agenda (§228.12), or within 15 days after the conclusion of the prehearing conference (§228.14) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

1. A concise statement of the witness’ interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state the witness’ relationship to the party; and
2. Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing specifies otherwise.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.
§228.12 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the Federal Register within 10 days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list:

(1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and
§ 228.13 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the Federal Register that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Assistant Administrator his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Assistant Administrator shall then make a final decision in accordance with these regulations (§228.21).

§ 228.14 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to §228.4:

1. Any person interested in participating at the hearing on such issues presented shall notify the Assistant Administrator by certified mail of an intent to participate not later than 10 days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless that person previously notified the Assistant Administrator pursuant to §228.5; and

2. Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of §228.7.

§ 228.15 Waiver of right to participate.

Persons who fail to notify the Assistant Administrator pursuant to §§228.5 and 228.14 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 228.16 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of the hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the Federal Register and shall expeditiously notify all parties by telephone or by mail: Provided, that if that change in time or place of hearing is made less than 5 days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the Federal Register; all subsequent documents published in the Federal Register; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With
§ 228.17 Direct testimony.

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:
   (1) State his or her name, address and occupation;
   (2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies the witness as an expert;
   (3) Identify the direct testimony previously submitted in accordance with these regulations; and
   (4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness, if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: Provided, that parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 228.18 Cross-examination.

(a) The presiding officer may:
   (1) Require the cross-examiner to outline the intended scope of the cross-examination;
   (2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Assistant Administrator’s or his or her representative’s interest shall be considered adverse to all parties;
   (3) Limit the number of times any party or parties having a common interest may cross-examine an “adverse” witness on the same matter; and
   (4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his or her name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party’s counsel who fails to appear at the hearing to cross-examine an “adverse” witness shall be deemed to have waived the right to cross-examine that witness.
§ 228.19 Oral and written arguments.

(a) The presiding officer may, in his or her discretion, provide for oral argument at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, the party shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state their arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 228.20 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Assistant Administrator. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Assistant Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Assistant Administrator shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

(d) Within 20 days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Assistant Administrator any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the 20-day period to the Assistant Administrator at the previously mentioned address.

§ 228.21 Assistant Administrator's decision.

(a) Upon receipt of the recommended decision and transcript and after the 20-day period for receiving written comments on the recommended decision has passed, the Assistant Administrator shall make a final decision on the proposed regulations and waiver, where applicable. The Assistant Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Assistant Administrator's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.
PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

Subpart A—General Provisions

Sec. 229.1 Purpose and scope.
229.2 Definitions.
229.3 Prohibitions.
229.4 Requirements for Category I and II fisheries.
229.5 Requirements for Category III fisheries.
229.6 Reporting requirements.
229.7 Monitoring of incidental mortalities and serious injuries.
229.8 Publication of List of Fisheries.
229.9 Emergency regulations.
229.10 Penalties.
229.11 Confidential fisheries data.
229.12 Consultation with the Secretary of the Interior.

Subpart B—Takes of Endangered and Threatened Marine Mammals

229.20 Issuance of permits.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations

229.30 Basis.
229.31 Pacific Offshore Cetacean Take Reduction Plan.
229.32 Atlantic large whale take reduction plan regulations.
229.33 Harbor Porpoise Take Reduction Plan Implementing Regulations—Gulf of Maine.
229.34 Harbor Porpoise Take Reduction Plan—Mid-Atlantic.

Figure 1 to Part 229—Drift Gillnet Finger Configuration and Extender Requirements

Authority: 16 U.S.C. 1361 et seq.
Source: 60 FR 45100, Aug. 30, 1995, unless otherwise noted.

Subpart A—General Provisions

§229.1 Purpose and scope.

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1377) that provide for exceptions for the taking of marine mammals incidental to certain commercial fishing operations from the Act’s general moratorium on the taking of marine mammals.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean, purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(c) The regulations of Subpart B also govern the incidental taking by commercial fishers of marine mammals from species or stocks designated under the Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(d) The regulations of this part do not apply to the incidental taking of California sea otters or to Northwest treaty Indian tribal members exercising treaty fishing rights.

(e) Authorizations under subpart A of this part are exemptions only from the taking prohibitions under the Act and not those under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authorization under subpart B of this part is required.

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations except as provided for under §§229.4(k) and 229.5(f).

(g) The purposes of the regulations in this part are to:

1. Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations below the potential biological removal level for a particular stock, and
2. Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial
§ 229.2 Definitions.

In addition to the definitions contained in the Act and §216.3 of this chapter, and unless the context otherwise requires, in this part 229:

Act or MMPA means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.).

American lobster or lobster means Homarus americanus.

Anchored gillnet means any gillnet gear, including a sink gillnet or stab net, that is set anywhere in the water column and which is anchored, secured or weighted to the bottom of the sea. Also called a set gillnet.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

Authorization Certificate means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

Breaking strength means the highest tensile force which an object can withstand before breaking.

Bridle means the lines connecting a gillnet to an anchor or buoy line.

Buoy line means a line connecting fishing gear in the water to a buoy at the surface of the water.

Category I fishery means a commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock’s potential biological removal level and that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock’s potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is “occasional” by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published.

Category III fishery means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

(1) Ten percent or less of any marine mammal stock’s potential biological removal level, or
(2) More than 10 percent of any marine mammal stock’s potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock’s potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is “remote” by evaluating other factors such as fishing techniques, gear used, methods

§ 229.2 fishing operations to insignificant levels approaching a zero mortality and serious injury rate by the statutory deadline of April 30, 2001.

used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Assistant Administrator.

Commercial fishing operation means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in §216.3 of this chapter) activities and aquaculture activities.

Depleted species means any species or population that has been designated as depleted under the Act and is listed in §216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

Driftnet, drift gillnet, or drift entanglement gear means a gillnet or gillnets that is/are unattached to the ocean bottom and not anchored, secured or weighted to the bottom, regardless of whether attached to a vessel.

Fisher or fisherman means the vessel owner or operator, or the owner or operator of gear in a nonvessel fishery.

Fishery has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Fishing trip means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel’s return to port or the return of a fisher from tending gear in a nonvessel fishery.

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

Float-line means the rope at the top of a gillnet from which the mesh portion of the net is hung.

Gillnet means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term “gillnet” includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g. stab and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

Groundline, with reference to lobster trap gear, means a line connecting lobster traps in a lobster trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

Incidental means, with respect to an act, a non-intentional or accidental act that results from, but is not the purpose of, carrying out an otherwise lawful action.

Injury means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.

Interaction means coming in contact with fishing gear or catch. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occurs, or situations where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

Large mesh gillnet means a gillnet constructed with a mesh size of 7 inches (17.78 cm) to 18 inches (45.72 cm).

Lead-line means the rope, weighted or otherwise, to which the bottom edge of a gillnet is attached.

List of Fisheries means the most recent final list of commercial fisheries published in the Federal Register by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury
of marine mammals during commercial fishing operations.

*Lobster trap* means any trap, pot or other similar type of enclosure that is placed on the ocean bottom and is designed to or is capable of catching lobsters. This definition includes but is not limited to lobster pots, black sea bass pots and scup pots.

*Lobster trap trawl* means two or more lobster traps attached to a single groundline.

*Mesh size* means the distance between inside knot to inside knot. Mesh size is measured as described in §648.80(f)(1) of this title.

*Mid-Atlantic coastal waters* means waters bounded by the line defined by the following points: The southern shoreline of Long Island, New York at 72°30’W, then due south to 33°51’N lat., thence west to the North Carolina/South Carolina border.

*Minimum population estimate* means an estimate of the number of animals in a stock that:

1. Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and
2. Provides reasonable assurance that the stock size is equal to or greater than the estimate.

*Mudhole* means waters off New Jersey bounded as follows: From the point 40°30’ N. latitude where it intersects with the shoreline of New Jersey east to its intersection with 73°20’ W. longitude, then south to its intersection with 40°05’ N. latitude, then west to its intersection with the shoreline of New Jersey.

*Negligible impact* has the same meaning as in §228.3 of this chapter.

*Net productivity rate* means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

*Night* means any time between one half hour before sunset and one half hour after sunrise.

*NMFS* means the National Marine Fisheries Service.

*Nonvessel fishery* means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

*Observer* means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

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

*Potential biological removal level* means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

1. The minimum population estimate of the stock;
2. One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and
3. A recovery factor of between 0.1 and 1.0.

*Regional Fishery Management Council* means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

*Serious injury* means any injury that will likely result in mortality.

*Shark gillnetting* means to fish a gillnet in waters south of the South Carolina/Georgia border with webbing of 5 inches or greater stretched mesh.

*Sink gillnet* or *stab net* 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.

*Sinking line* means rope that sinks and does not float at any point in the water column. Polypropylene rope is not sinking line unless it contains a lead core.

*Small mesh gillnet* means a gillnet constructed with a mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78 cm).

*Southern Mid-Atlantic waters* means all state and Federal waters off the States of Delaware, Maryland, Virginia, and North Carolina, bounded on
the north by a line extending eastward from the northern shoreline of Delaware at 38°47' N. latitude (the latitude that corresponds with Cape Henlopen, DE), east to its intersection with 72°30' W. longitude, south to the 33°51' N. latitude (the latitude that corresponds with the North Carolina/South Carolina border), and then west to its intersection with the shoreline of the North Carolina/South Carolina border.

Spotter plane means a plane that is deployed for the purpose of locating schools of target fish for a fishing vessel that intends to set fishing gear on them.

Stowed means nets that are unavailable for use and that are stored in accordance with the regulations found in §648.81(e) of this title.

Strategic stock means a marine mammal stock:

1. For which the level of direct human-caused mortality exceeds the potential biological removal level;
2. Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;
3. Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or
4. Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

Strikenet or to fish with strikenet gear means a gillnet that is designed so that, when it is deployed, it encircles or encloses an area of water either with the net or by utilizing the shoreline to complete encirclement, or to fish with such a net and method.

Take Reduction Plan means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Team means a team established to recommend methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Tended gear or tend means fishing gear that is physically attached to a vessel in a way that is capable of harvesting fish, or to fish with gear attached to the vessel.

Tie-down refers to twine used between the floatline and the lead line as a way to create a pocket or bag of netting to trap fish alive.

To strikenet for sharks means to fish with strikenet gear in waters south of the South Carolina/Georgia border with webbing of 5 inches or greater stretched mesh.

U.S. waters means both state and Federal waters to the outer boundaries of the U.S. exclusive economic zone along the east coast of the United States from the Canadian/U.S. border southward to a line extending eastward from the southernmost tip of Florida on the Florida shore.

Vessel owner or operator means the owner or operator of:

1. A fishing vessel that engages in a commercial fishing operation; or
2. Fixed or other commercial fishing gear that is used in a nonvessel fishery.

Vessel of the United States has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Waters off New Jersey means all state and Federal waters off New Jersey, bounded on the north by a line extending eastward from the southern shoreline of Long Island, NY at 40°40' N. latitude, on the south by a line extending eastward from the northern shoreline of Delaware at 38°47' N. latitude (the latitude that corresponds with Cape Henlopen, DE), and on the east by the 72°30' W. longitude. This area includes the Mudhole.

Weak link means a breakable component of gear that will part when subjected to a certain tension load.

§ 229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.
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(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer’s responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the injury or mortality of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to retain any marine mammal incidentally taken in commercial fishing operations unless authorized by NMFS personnel, by designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

(f) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless authorized by NMFS personnel, by designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

(g) It is prohibited to violate any regulation in this part or any provision of section 118 of the Act.

(h) It is prohibited to fish with lobster trap gear in the areas and for the times specified in §229.32(b)(2) and (c)(2) through (c)(8) unless the lobster trap gear complies with the closures, marking requirements, modifications, and restrictions specified in §229.32(b)(3)(i), (b)(3)(ii), and (c)(1) through (c)(9).

(i) It is prohibited to fish with anchored gillnet gear in the areas and for the times specified in §229.32(b)(2) and (d)(2) through (d)(7) unless that gillnet gear complies with the closures, marking requirements, modifications, and restrictions specified in §229.32(b)(3)(i), (b)(3)(ii), and (d)(1) through (d)(8).

(j) It is prohibited to fish with drift gillnet gear in the areas and for the times specified in §229.32(d)(7) and (e)(1) unless the drift gillnet gear complies with the restrictions specified in §229.32(e)(1).

(k) It is prohibited to fish with shark gillnet gear in the areas and for the times specified in §229.32(b)(2), (f)(1)(i), and (f)(1)(ii) unless the gear complies with the closures, marking requirements, modifications, and other restrictions specified in §229.32(b)(3)(i), (b)(3)(ii), and (f)(2) through (f)(3)(iii)(D).

(l) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, from the areas and for the times specified in §229.33(a)(1) through (a)(6), except with the use of pingers as provided in §229.33(d)(1) through (d)(4). This prohibition does not apply to the use of a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title).

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any gillnet gear from the areas and for the times as specified in §229.34(b)(1)(ii) or (iii) or (b)(2)(i).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in §229.34(c)(1) through (c)(4) unless the gear complies with the specified gear restrictions set forth in those provisions.

(o) Beginning on January 1, 1999, it is prohibited to fish with, set, haul back sink gillnets or gillnet gear, or leave such gear in closed areas where pingers are required, as specified under §229.33(c)(1) through (c)(4), unless a person on board the vessel during fishing operations possesses a valid pinger certification training certificate issued by NMFS.

(p) Beginning on January 1, 2000, it is prohibited to fish with, set, haul back, possess any large mesh or small mesh gillnet gear in Mid-Atlantic waters in the areas and during the times specified under §229.34(d), unless the gear is properly tagged in compliance with that provision and unless a net tag certificate is on board the vessel. It is prohibited to refuse to produce a net tag certificate.
§ 229.4 Requirements for Category I and II fisheries.

(a) General. (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the Federal Register announcing the integrated program and summarizing how an owner or authorized representative of a fishing vessel or non-fishing gear may register under that program or how registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) Registration. (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the Federal Register announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate. To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.

(v) A certification signed and dated by the owner of an authorized representative of the owner as follows: ‘I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge.’

(vi) A check or money order made payable to NMFS in the amount specified in the notice of the final List of
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Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(3) If a notice is published in the Federal Register announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

(d) Issuance. (1) For integrated fisheries, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(2) For all other fisheries (i.e., non-integrated fisheries), NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§ 229.6 and 229.7.

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year.

(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt.

(e) Authorization Certificate and decal requirements. (1) If a decal has been issued under the conditions specified in paragraph (e)(2) of this section, the decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must
§ 229.6 Reporting requirements.

(a) Vessel owners or operators engaged in any commercial fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as fax or overnight mail.
§ 229.7 Monitoring of incidental mortalities and serious injuries.

(a) Purpose. The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

(1) Obtain statistically reliable estimates of incidental mortality and serious injury;

(2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and

(3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) Observer program. Pursuant to paragraph (a) of this section, the Assistant Administrator may observe Category I and II fisheries, or by a designated contractor providing observer services to NMFS, a vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The vessel owner/operator and crew must cooperate with the observer in the performance of the observer’s duties including:

(1) Providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are approved in advance by the Regional Administrator;

(2) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea
conditions allow, and with the agreement of the observer involved;
(iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;
(iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;
(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;
(vi) Sampling, retaining, and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible;
(vii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;
(viii) Not impairing or in any way interfering with the research or observations being carried out; and
(ix) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

5) Marine mammals or other specimens identified in paragraph (c)(4)(vi) of this section, which are readily accessible to crew members, must be brought on board the vessel and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the observer. Specimens so collected and retained must, upon request by NMFS personnel, designated contractors, or the observer, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. These biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(d) Observer requirements for participants in Category III fisheries. (i) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and
(ii) Has complied with §229.9(a)(3)(i) and (ii); or
(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner and/or operator must comply with the requirements of §229.7(c).

(e) Alternative observer program. The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

§229.8 Publication of List of Fisheries.

(a) The Assistant Administrator will publish in the FEDERAL REGISTER a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions of Category I, II, and III fisheries set forth in §229.2; and

(2) List the marine mammals that have been incidentally injured or killed by commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

(c) The Assistant Administrator may publish a revised List of Fisheries at other times, after notification and opportunity for public comment.
§ 229.9 Emergency regulations.

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect—

(i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) Approve and implement on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed—

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established and if recategorization of the fishery is warranted; and

(iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 et seq.), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under § 229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:

(1) Shall be published in the Federal Register and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in paragraph (d) of this section; and

(2) May be terminated by notification in the Federal Register at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.


§ 229.10 Penalties.

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this part or any provision of section 118 of the MMPA shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act,
§ 229.11 Confidential fisheries data.

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216–100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216–100. Aggregate data will be made available to the public on a timely basis.
or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

§ 229.12 Consultation with the Secretary of the Interior.

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

Subpart B—Takes of Endangered and Threatened Marine Mammals

§ 229.20 Issuance of permits.

(a) Determinations. During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels that have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such species or threatened species under the Endangered Species Act of 1973;

(3) Where required under regulations in subpart A of this part:
   (i) A monitoring program has been established under §229.7;
   (ii) Vessels engaged in such fisheries are registered in accordance with §229.4; and
   (iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) Procedures for making determinations. In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish an announcement in the Federal Register of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the Federal Register a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) Issuance of authorization. The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under §229.4 and for which determinations under the procedures of paragraph (b) of this section can be made.

(d) Category III fisheries. Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of §229.6.

(e) Emergency authority. During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened
species or stock, the Assistant Administrator will use the emergency authority of §229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) Suspension, revocation, modification and amendment. The Assistant Administrator may, pursuant to the provisions of 15 CFR part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify, after notification and opportunity for public comment, the list of fisheries published in accordance with paragraph (b) of this section whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) Southern sea otters. This subpart does not apply to the taking of Southern (California) sea otters.


Subpart C—Take Reduction Plan Regulations and Emergency Regulations

§ 229.30 Basis.
Section 118(f)(9) of the Act authorizes the Director, NMFS, to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by such a plan.

[64 FR 9088, Feb. 24, 1999]

§ 229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) Purpose and scope. The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) Extenders. An extender is a line that attaches a buoy (float) to a drift gillnet’s floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum of 36 feet (10.9 m) below the surface of the water.

(c) Pingers. (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (± 2 kHz) sound at 132 dB (± 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (+ 15 milliseconds), and repeating every 4 seconds (+ 2 seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) While at sea, operators of drift gillnet vessels with gillnets onboard must carry enough pingers on the vessel to meet the requirements set forth under paragraphs (c)(3) through (6) of this section.

(3) Floatline. Pingers shall be attached within 30 ft (9.14 m) of the floatline and spaced no more than 300 ft (91.44 m) apart.

(4) Leadline. Pingers shall be attached within 36 ft (10.97 m) of the leadline and spaced no more than 300 ft (91.44 m) apart.

(5) Staggered Configuration. Pingers attached within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft (45.5 m).

(6) Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(7) The pingers must be operational and functioning at all times during deployment.

(8) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) Skipper education workshops. After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing
each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

§229.32 Atlantic large whale take reduction plan regulations.

(a)(1) Regulated waters. The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(2) of this section.

(2) Exempted waters. The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet and to waters landward of the following lines:

Rhode Island
41° 27′ 99″ N 71° 11′ 75″ W TO 41° 28′ 49″ N 71° 14′ 63″ W (Sakonnet River)
41° 26′ 96″ N 71° 21′ 24″ W TO 41° 26′ 96″ N 71° 25′ 92″ W (Narragansett Bay)
41° 22′ 41″ N 71° 30′ 80″ W TO 41° 22′ 41″ N 71° 30′ 85″ W (Pt. Judith Pond Inlet)
41° 21′ 31″ N 71° 38′ 30″ W TO 41° 21′ 30″ N 71° 38′ 33″ W (Ninigret Pond Inlet)
41° 19′ 90″ N 71° 43′ 08″ W TO 41° 19′ 90″ N 71° 43′ 10″ W (Quonochontaug Pond Inlet)
41° 19′ 66″ N 71° 45′ 75″ W TO 41° 19′ 66″ N 71° 45′ 78″ W (Weekapaug Pond Inlet)

New York
West of the line from the Northern fork of the eastern end of Long Island, NY (Orient Pt.) to Plum Island to Fisher’s Island to Watch Hill, RI. (Long Island Sound)
41° 11′ 40″ N 72° 09′ 70″ W TO 41° 04′ 50″ N 71° 51′ 00″ W (Gardiners Bay)
40° 50′ 39″ N 72° 28′ 59″ W TO 40° 50′ 36″ N 72° 28′ 67″ W (Shinnecock Bay Inlet)
40° 45′ 70″ N 72° 45′ 15″ W TO 40° 45′ 72″ N 72° 45′ 30″ W (Moriches Bay Inlet)
40° 37′ 32″ N 73° 18′ 20″ W TO 40° 38′ 00″ N 73° 18′ 56″ W (Fire Island Inlet)
40° 34′ 49″ N 73° 34′ 55″ W TO 40° 35′ 08″ N 73° 35′ 22″ W (Jones Inlet)

New Jersey
39° 45′ 00″ N 74° 05′ 90″ W TO 39° 45′ 15″ N 74° 06′ 20″ W (BarNEGAt Inlet)
39° 30′ 70″ N 74° 16′ 70″ W TO 39° 26′ 30″ N 74° 19′ 75″ W (Beach Haven to Brigantine Inlet)
38° 56′ 20″ N 74° 51′ 70″ W TO 38° 56′ 20″ N 74° 51′ 90″ W (Cape May Inlet)
38° 16′ 70″ N 75° 14′ 60″ W TO 39° 11′ 25″ N 75° 23′ 90″ W (Delaware Bay)

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two-color code must be permanently marked on or along the line or lines specified under (f)(2) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator (AA).

(4) Requirements for other specified areas. Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with (b)(4)(i) and (b)(4)(ii) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section. For the purposes of the following gear marking requirements only, lobster trap gear set in the CCB Restricted Area during the winter restricted period, the Federal-water portion of the CCB Restricted Area during the off-peak period, and the Stellwagen Bank/Jeffreys Ledge Restricted Area shall comply with the requirements for the Northern Nearshore Lobster Waters Area. Lobster gear set in the GSC Restricted Area shall comply with the requirements for the Offshore Lobster Waters Area. Similarly, anchored gillnet gear set in the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, and GSC Silver Restricted Area shall comply with the requirements for gillnet gear in the Other Northeast Gillnet Waters Area.

(i) Color code. Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(A) Lobster trap gear in the Northern Nearshore Lobster Waters Area must be marked with a red marking.

(B) Lobster trap gear in the Southern Nearshore Lobster Waters Area must be marked with an orange marking.

(C) Lobster trap gear in the Offshore Lobster Waters Area must be marked with a black marking.

(D) Gillnet gear in the Other Northeast Gillnet Waters Area must be marked with a green marking.

(ii) Markings. All specified gear in specified areas must be marked with one color code (see paragraph (4)(i) of this section) which indicates the gear type and general area where the gear is set. Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The mark must be placed along the buoy line midway in the water column.

(5) Changes to requirements. If the Assistant Administrator revises the gear marking requirements in accordance with paragraph (g) of this section, the gear must be marked in compliance with those requirements.

(c) Restrictions applicable to lobster trap gear in regulated waters—(1) Universal lobster trap gear requirements. In addition to the area-specific measures listed in (c)(2) through (c)(8) of this section, all lobster trap gear in regulated waters, including the Northern Inshore State Lobster Waters Area, must comply with the universal gear requirements listed here. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(i) No line floating at the surface. No person may fish with lobster trap gear that has any portion of the buoy line that is directly connected to the gear at the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(ii) No wet storage of gear. Lobster traps must be hauled out of the water at least once every 30 days.

1Fishers are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.
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(2) Cape Cod Bay Restricted Area—(i) Area. The CCB restricted area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) Area-specific gear requirements during the winter restricted period. No person may fish with lobster trap gear in the CCB Restricted Area during the winter restricted period unless that person’s gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) Winter restricted period. The winter restricted period for the CCB Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(B) Weak links. All buoy lines shall be attached to the main buoy with a weak link meeting the following specifications:

(1) The breaking strength of the weak link must not exceed 500 lb (226.7 kg).

(2) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(C) Single traps and multiple-trap trawls. Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) Sinking buoy lines. All buoy lines must be comprised of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) Sinking ground line. All ground lines must be comprised entirely of sinking line.

(iii) Area-specific gear requirements during the other restricted period. No person may fish with lobster trap gear in the CCB Restricted Area during the other restricted period unless that person’s gear complies with the gear marking requirements in paragraph (b) of this section and the universal lobster trap gear requirements in (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) Other restricted period. The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises that period in accordance with paragraph (g) of this section.

(B) Gear requirements—(1) State-water portion. No person may fish with lobster trap gear in the state-water portion of the CCB Restricted Area during the other restricted period unless that person’s gear complies with the requirements for the Northern Inshore State Lobster Waters Area listed in (c)(6) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(2) Federal-water portion. No person may fish with lobster trap gear in the federal-water portion of the CCB Restricted Area during the other restricted period unless that person’s gear complies with the requirements for the Northern Nearshore Lobster Waters Area in (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(3) Great South Channel Restricted Lobster Area—(i) Area. The GSC Restricted Lobster Area consists of the GSC right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) Closure during the spring restricted period—(A) Spring restricted period. The spring restricted period for the GSC
Restricted Lobster Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (g) of this section.

(B) **Closure.** During the spring restricted period, no person may fish with or set lobster trap gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) **Area-specific gear requirements for the other restricted period.** No person may fish with lobster trap gear in the GSC Restricted Lobster Area unless that person’s gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the gear or practices comply with those specifications.

(A) **Other restricted period.** The other restricted period for the GSC Restricted Lobster Area is July 1 through March 31, unless the Assistant Administrator revises the timing in accordance with paragraph (g) of this section.

(B) **Weak links.** All buoy lines must be attached to the main buoy with a weak link meeting the specifications listed in subparagraph (c)(5)(ii)(A) below for the Offshore Lobster Waters Area in (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(5) **Offshore Lobster Waters Area—(i) Area.** The Offshore Lobster Waters Area includes all waters bounded by straight lines connecting the following points in the order stated (including the area known as the Area 2/3 Overlap in the American Lobster Fishery regulations at 50 CFR 697.18 but not including the GSC Restricted Lobster Area):

<table>
<thead>
<tr>
<th>Point</th>
<th>Latitude (°N)</th>
<th>Longitude (°W)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>43° 58'</td>
<td>67° 22'</td>
</tr>
<tr>
<td>B</td>
<td>43° 41'</td>
<td>68° 00'</td>
</tr>
<tr>
<td>C</td>
<td>43° 12'</td>
<td>69° 00'</td>
</tr>
<tr>
<td>D</td>
<td>42° 49'</td>
<td>69° 40'</td>
</tr>
<tr>
<td>E</td>
<td>42° 15.5'</td>
<td>69° 40'</td>
</tr>
<tr>
<td>F</td>
<td>42° 10'</td>
<td>69° 56'</td>
</tr>
<tr>
<td>G</td>
<td>41° 10'</td>
<td>69° 6.5'</td>
</tr>
<tr>
<td>H</td>
<td>40° 45.5'</td>
<td>71° 34'</td>
</tr>
<tr>
<td>I</td>
<td>40° 27.5'</td>
<td>72° 14'</td>
</tr>
<tr>
<td>J</td>
<td>40° 12.5'</td>
<td>72° 49.5'</td>
</tr>
<tr>
<td>K</td>
<td>39° 50'</td>
<td>73° 01'</td>
</tr>
<tr>
<td>L</td>
<td>38° 32.5'</td>
<td>73° 40'</td>
</tr>
<tr>
<td>M</td>
<td>38° 12'</td>
<td>73° 55'</td>
</tr>
<tr>
<td>N</td>
<td>37° 12'</td>
<td>74° 44'</td>
</tr>
<tr>
<td>O</td>
<td>35° 34'</td>
<td>74° 51'</td>
</tr>
<tr>
<td>ZA</td>
<td>35° 14.5'</td>
<td>75° 31'</td>
</tr>
</tbody>
</table>

*From Point ZB east to the EEZ boundary, thence along the seaward EEZ boundary to Point A.*

(ii) **Area-specific gear requirements.** No person may fish with lobster trap gear in the Offshore Lobster Waters Area unless that person’s gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) **Weak Links.** All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(1) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(2) The breaking strength of these weak links must not exceed 3780 lb (1714.3 kg).
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(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) [Reserved]

(6) Northern Inshore State Lobster Waters Area—(i) Area. The Northern Inshore State Lobster Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine but does not include waters exempted under (a)(2) of this section.

(ii) Area-specific gear requirements. No person may fish with lobster trap gear in the Northern Inshore State Lobster Waters Area unless that person’s gear complies with the universal lobster trap gear requirements in (c)(1) of this section and at least one of the options on the Lobster Take Reduction Technology List in (c)(9) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(7) Northern Nearshore Lobster Waters Area—(i) Area. The Northern Nearshore Lobster Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the CCB Restricted Area and the Stellwagen Bank/Jeffreys Ledge Restricted Area.

(ii) Area-specific gear requirements. No person may fish with lobster trap gear in the Northern Nearshore Lobster Waters Area unless that person’s gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the gear requirements listed below for this area. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) Weak Links. All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(i) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(ii) Single traps and multiple-trap trawls. Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.

(8) Southern Nearshore Lobster Waters Area—(i) Area. The Southern Nearshore Lobster Waters Area includes all state and federal waters which fall within EEZ Nearshore Management Area 4 and EEZ Nearshore Management Area 5 as described in the American Lobster Fishery regulations in 50 CFR 697.18.

(ii) Area-specific gear requirements for the restricted period—(A) Restricted period. The restricted period for Southern Nearshore Lobster Waters is from October 1 through April 30 unless the AA revises this period in accordance with paragraph (g) of this section.

(B) Gear requirements. No person may fish with lobster trap gear in the Southern Nearshore Lobster Waters Area during the restricted period unless that person’s gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and at least one of the options on the Lobster Take Reduction Technology List in (c)(9) of this section. The AA may revise these requirements in accordance with paragraph (g) of this section.

(9) Lobster Take Reduction Technology List. The following gear modification options comprise the Lobster Take Reduction Technology List:

(i) All buoy lines must be 7/16 inches (1.11 cm) or less in diameter.

(ii) All buoys must be attached to the buoy line with a weak link meeting the following specifications:

(A) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(2) The breaking strength of these weak links must not exceed 600 lb (272.4 kg).

(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) Single traps and multiple-trap trawls. Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.
approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(B) The breaking strength of these weak links must not exceed 600 lb (272.4 kg).

(C) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(iii) All buoy lines must be comprised entirely of sinking line.

(iv) All ground lines must be comprised entirely of sinking line.

(d) Restrictions applicable to anchored gillnet gear—(1) Universal anchored gillnet gear requirements. In addition to the area-specific measures listed in (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here\(^2\). The AA may revise these requirements in accordance with paragraph (g) of this section.

(i) No line floating at the surface. No person may fish with anchored gillnet gear that has any portion of the buoy line that is directly connected to the gear on the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(ii) No wet storage of gear. Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(2) Cape Cod Bay Restricted Area—(i) Area. The CCB Restricted Area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b), unless the AA changes the boundaries in accordance with paragraph (g) of this section.

(ii) Closure during the winter restricted period—(A) Winter restricted period. The winter restricted period for this area is from January 1 through May 15 of each year, unless the AA revises the timing in accordance with paragraph (g) of this section.

(B) Closure. During the winter restricted period, no person may fish with anchored gillnet gear in the CCB Restricted Area unless the AA specifies gear restrictions or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications. The AA may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the Federal Register if NMFS determines that right whales have left the critical habitat and are unlikely to return for the remainder of the season.

(iii) Area-specific gear requirements for the other restricted period—(A) Other restricted period. The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the AA revises that period in accordance with paragraph (g) of this section.

(B) No person may fish with anchored gillnet gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(3) Great South Channel Restricted Gillnet Area—(i) Area. The GSC Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02’2” N/69°02’ W, 41°43.5’ N/69°36.3’ W, 42°10’ N/68°31’ W, and 41°38’ N/68°13’ W. This area includes most of the GSC right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in (d)(4)(i) here. The AA may revise these boundaries in accordance with paragraph (g) of this section.

(ii) Closure during the spring restricted period—(A) Spring restricted period. The
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spring restricted period for the GSC Restricted Gillnet Area is from April 1 through June 30 of each year unless the AA revises that period in accordance with paragraph (g) of this section.

(B) Closure. During the spring restricted period, no person may set or fish with anchored gillnet gear in the GSC Restricted Gillnet Area unless the AA specifies gear restrictions or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) Area-specific gear requirements for the other restricted period.—(A) Other restricted period. The other restricted period for the GSC Restricted Gillnet Area is from July 1 though March 31 of each year unless the AA revises that period in accordance with paragraph (g) of this section.

(B) During the other restricted period, no person may fish with anchored gillnet gear in the GSC Restricted Gillnet Area unless that person’s gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(A) Great South Channel Sliver Restricted Area.—(1) Area. The GSC Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N/69°02′ W, 41°43.5′ N/69°36.3′ W, 41°40′ N/69°45′ W, and 41°00′ N/69°05′ W. The AA may change these boundaries in accordance with paragraph (g) of this section.

(ii) Area-specific gear requirements. No person may fish with anchored gillnet gear in the GSC Sliver Restricted Area unless that person’s gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(5) Stellwagen Bank/Jeffreys Ledge Restricted Area.—(1) Area. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under CFR 226.203(b), that lie south of 43°15′ N. lat. and west of 70°W long. The AA may change these boundaries in accordance with paragraph (g) of this section.

(ii) Area-specific gear requirements. No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(6) Other Northeast Gillnet Waters Area.—(1) Area. The Other Northeast Gillnet Waters Area consists of all U.S. waters west of the U.S./Canada border and north of a line extending due east from the Virginia/North Carolina border with the exception of the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Mid-Atlantic Coastal Waters Area, and exempted waters listed in (a)(2) of this section.

(ii) Area-specific gear requirements. No person may fish with anchored gillnet gear in the Other Northeast Gillnet Waters Area unless that person’s gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed below. The AA may revise these requirements in accordance with paragraph (g) of this section.

(A) Buoy line weak links. All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(1) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links,
rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the AA.

(2) The breaking strength of these weak links must not exceed 1100 lb (498.8 kg).

(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(b) Net panel weak links. All net panels must contain weak links meeting the following specifications:

(1) Weak links must be inserted in the center of the floatline (headrope) of each net panel in a net string.

(2) The breaking strength of these weak links must not exceed 1100 lb (498.8 kg).

(c) Anchoring System. All anchored gillnet strings containing 20 or fewer net panels must be securely anchored with one of the following anchoring systems:

(1) Anchors with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

(2) Dead weights weighing at least 50 lb (22.7 kg) at each end of the net string, or

(3) A lead line weighing at least 100 lb (45.4 kg) per 300 ft (91.4 m) for each net panel in the net string.

(7) Mid-Atlantic Coastal Waters Area—

(i) Area. The mid-Atlantic Coastal Waters Area is defined in §229.2.

(ii) Gear requirements. From December 1 through March 31, no person may fish with anchored gillnets in the mid-Atlantic Coastal Waters Area unless that person’s gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(iii) Weak links with a breaking strength of up to 1100 lb (498.8 kg) are installed in the float rope between net panels.

(iv) All buoy lines are composed entirely of sinking line.

(e) Restrictions applicable to mid-Atlantic driftnet gear—(1) Restrictions. From December 1 through March 31 of the following year, no person may fish with driftnet gear at night in the mid-Atlantic coastal waters area unless that gear is tended. During that time, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(f) Restrictions applicable to shark gillnet gear—(1) Management areas—(i) Southeast U.S. restricted area. The southeast U.S. restricted area consists of the area from 32°36′ N lat. (near Savannah, GA) south to 27°51′ N lat. (near Sebastian Inlet, FL), extending from the shore eastward out to 80°00′ W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) Southeast U.S. observer area. The southeast U.S. observer area consists of the southeast U.S. restricted area and an additional area along the coast south to 36°46.5′ N lat. (near West Palm Beach, FL) and extending from the shore eastward out to 80°00′ W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(2) Gear marking requirements. From November 15 through March 31 of the following year, no person may fish with gillnet gear in the southeast U.S. observer area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. From November 15,
§ 229.33 Harbor Porpoise Take Reduction Plan Implementing Regulations—Gulf of Maine.

(a) Restrictions—(1) Northeast Closure Area. From August 15 through September 13 of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, from NortheastClosure

VerDate 11<MAY>2000 12:26 Oct 15, 2001 Jkt 194208 PO 00000 Frm 00248 Fmt 8010 Sfmt 8010 Y:\SGML\194208T.XXX pfrm04 PsN: 194208T
Area. This prohibition does not apply to a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title). The Northeast Closure Area is the area bounded by straight lines connecting the following points in the order stated:

**Northeast Closure Area**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>NE1</td>
<td>(1)</td>
<td>68°55'0&quot;</td>
</tr>
<tr>
<td>NE2</td>
<td>43°29.6'</td>
<td>68°55'0&quot;</td>
</tr>
<tr>
<td>NE3</td>
<td>44°04.4'</td>
<td>67°48.7'</td>
</tr>
<tr>
<td>NE4</td>
<td>44°36.9'</td>
<td>67°52.8'</td>
</tr>
<tr>
<td>NE5</td>
<td>44°31.2'</td>
<td>67°02.7'</td>
</tr>
<tr>
<td>NE6</td>
<td>(1)</td>
<td>67°02.7'</td>
</tr>
</tbody>
</table>

1 Maine shoreline.

(2) Mid-Coast Closure Area. From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies. This prohibition does not apply to a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title). The Mid-Coast Closure Area is the area bounded by straight lines connecting the following points in the order stated:

**Mid-Coast Closure Area**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>MC1</td>
<td>42°30'</td>
<td>(1)</td>
</tr>
<tr>
<td>MC2</td>
<td>42°30'</td>
<td>70°10'</td>
</tr>
<tr>
<td>MC3</td>
<td>42°40'</td>
<td>70°15'</td>
</tr>
<tr>
<td>MC4</td>
<td>42°40'</td>
<td>70°00'</td>
</tr>
<tr>
<td>MC5</td>
<td>43°00'</td>
<td>70°00'</td>
</tr>
<tr>
<td>MC6</td>
<td>43°00'</td>
<td>69°30'</td>
</tr>
<tr>
<td>MC7</td>
<td>43°30'</td>
<td>69°30'</td>
</tr>
<tr>
<td>MC8</td>
<td>43°30'</td>
<td>69°00'</td>
</tr>
<tr>
<td>MC9</td>
<td>45°30'</td>
<td>(1)</td>
</tr>
</tbody>
</table>

1 Massachusetts shoreline.

(3) Massachusetts Bay Closure Area. From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Closure Area, except with the use of pingers as provided in paragraph (d)(3) of this section. This prohibition does not apply to a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). The Massachusetts Bay Closure Area is the area bounded by straight lines connecting the following points in the order stated:

**Massachusetts Bay Closure Area**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>MB1</td>
<td>42°30'</td>
<td>(1)</td>
</tr>
<tr>
<td>MB2</td>
<td>42°30'</td>
<td>70°30'</td>
</tr>
<tr>
<td>MB3</td>
<td>42°12'</td>
<td>70°30'</td>
</tr>
<tr>
<td>MB4</td>
<td>42°12'</td>
<td>70°00'</td>
</tr>
<tr>
<td>MB5</td>
<td>(1)</td>
<td>70°00'</td>
</tr>
<tr>
<td>MB6</td>
<td>42°00'</td>
<td>(1)</td>
</tr>
<tr>
<td>MB7</td>
<td>42°00'</td>
<td>(1)</td>
</tr>
</tbody>
</table>

1 Massachusetts shoreline.

(4) Cape Cod South Closure Area. From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from Cape Cod South Closure Area, except with the use of pingers as provided in paragraph (d)(3) of this section. This prohibition does not apply to a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). The Cape Cod South Closure Area is the area bounded by straight lines connecting the following points in the order stated:

**Cape Cod South Closure Area**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCS1</td>
<td>(1)</td>
<td>71°45'</td>
</tr>
<tr>
<td>CCS2</td>
<td>40°40'</td>
<td>71°45'</td>
</tr>
<tr>
<td>CCS3</td>
<td>40°40'</td>
<td>70°30'</td>
</tr>
<tr>
<td>CCS4</td>
<td>(1)</td>
<td>70°30'</td>
</tr>
</tbody>
</table>

1 Rhode Island shoreline.

(5) Offshore Closure Area. From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from Offshore Closure Area, except with the use of pingers as provided in §229.33(d)(4). This prohibition does not apply to a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). The Offshore Closure Area is the area bounded by straight lines connecting the following points in the order stated:

**Offshore Closure Area**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>OFS1</td>
<td>42°50'</td>
<td>69°30'</td>
</tr>
<tr>
<td>OFS2</td>
<td>43°10'</td>
<td>69°10'</td>
</tr>
<tr>
<td>OFS3</td>
<td>43°10'</td>
<td>67°40'</td>
</tr>
<tr>
<td>OFS4</td>
<td>42°10'</td>
<td>67°40'</td>
</tr>
<tr>
<td>OFS5</td>
<td>42°10'</td>
<td>69°30'</td>
</tr>
</tbody>
</table>
(6) Cashes Ledge Closure Area. For the month of February of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This prohibition does not apply to a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). The Cashes Ledge Closure Area is the area bounded by straight lines connecting the following points in the order stated:

**Cashes Ledge Closure Area**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CL1</td>
<td>42°30'</td>
<td>69°00'</td>
</tr>
<tr>
<td>CL2</td>
<td>42°30'</td>
<td>68°30'</td>
</tr>
<tr>
<td>CL3</td>
<td>43°00'</td>
<td>69°00'</td>
</tr>
<tr>
<td>CL4</td>
<td>43°00'</td>
<td>68°30'</td>
</tr>
<tr>
<td>CL5</td>
<td>42°30'</td>
<td>69°00'</td>
</tr>
</tbody>
</table>

(b) Pingers—(1) Pinger specifications. For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (±2 kHz) sound at 132 dB (±4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (±15 milliseconds), and repeating every 4 seconds (±0.2 seconds).

(2) Pinger attachment. An operating and functional pinger must be attached at the end of each string of the gillnets and at the bridle of every net within a string of nets.

(c) Pinger training and certification. Beginning on January 1, 1999, the operator of a vessel may not fish with, set or haul back sink gillnets or gillnet gear, or allow such gear to be in closed areas where pingers are required as specified under paragraph (b) of this section, unless the operator has satisfactorily completed the pinger certification training program and possesses on board the vessel a valid pinger training certificate issued by NMFS. Notice will be given announcing the times and locations of pinger certification training programs.

(d) Use of pingers in closed areas—(1) Vessels, subject to the restrictions and regulations specified in paragraph (a)(2) of this section, may fish in the Mid-coast Closure Area from September 15 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(2) Vessels, subject to the restrictions and regulations specified in paragraph (a)(3) of this section, may fish in the Massachusetts Bay Closure Area from December 1 through the last day of February and from April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(3) Vessels, subject to the restrictions and regulations specified in paragraph (a)(4) of this section, may fish in the Cape Cod South Closure Area from December 1 through the last day of February and from April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(4) Vessels, subject to the restrictions and regulations specified in paragraph (a)(5) of this section, may fish in the Offshore Closure Area from November 1 through May 31 of each fishing year, with the exception of the Cashes Ledge Closure Area. From February 1 through the end of February, the area within the Offshore Closure Area defined as “Cashes Ledge” is closed to all fishing with sink gillnets. Vessels subject to the restrictions and regulation specified in paragraph (a)(5) of this section may fish in the Offshore Closure Area outside the Cashes Ledge Area from February 1 through the end of February provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(e) Other special measures. The Assistant Administrator may revise the requirements of this section through notification published in the Federal Register if:

(1) After plan implementation, NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch to the PBR level with the current plan.
§ 229.34 Harbor Porpoise Take Reduction Plan—Mid-Atlantic.

(a)(1) Regulated waters. The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 73°36' W, longitude and on the south by the North Carolina/South Carolina border (33°51' N. latitude), except for the areas exempted in paragraph (a)(2) of this section.

(2) Exempted waters. All waters landward of the first bridge over any embayment, harbor, or inlet will be exempted. The regulations in this section do not apply to waters landward of the following lines:

New York
40° 45.70' N 72° 45.15' W TO 40° 45.72' N 72° 45.30' W (Moriches Bay Inlet)
40° 37.25' N 73° 18.60' W TO 40° 38.00' N 73° 18.56' W (Fire Island Inlet)
40° 34.46' N 73° 34.55' W TO 40° 35.06' N 73° 35.22' W (Jones Inlet)

New Jersey/Delaware
39° 45.90' N 74° 05.80' W TO 39° 45.15' N 74° 06.20' W (Barnegat Inlet)
39° 30.70' N 74° 16.70' W TO 39° 26.30' N 74° 19.75' W (Beach Haven to Brigantine Inlet)
38° 56.20' N 74° 51.70' W TO 38° 56.20' N 74° 51.90' W (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) Closures—(1) New Jersey waters. From April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the waters off New Jersey.

(2) Mudhole. From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the waters off New Jersey known as the Mudhole.

(3) Southern Mid-Atlantic waters. From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the southern Mid-Atlantic waters.

c) Gear requirements and limitations—(1) Waters off New Jersey—large mesh gear requirements and limitations. From January 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear in waters off New Jersey, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in waters off New Jersey with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) Floatline length. The floatline is no longer than 4,800 ft (1,463.0 m), and, if the gear is used in the Mudhole, the floatline is no longer than 3,900 ft (1,188.7 m).

(ii) Twine size. The twine is at least 0.04 inches (0.090 cm) in diameter.

(iii) Size of nets. Individual nets or net panels are not more than 300 ft (91.44 m, or 50 fathoms), in length.

(iv) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(v) Tie-down system. The gillnet is equipped with tie-downs spaced not more than 15 ft (4.6 m) apart along the

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National Marine Fisheries Service/NOAA, Commerce

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floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(vi) Tagging requirements. Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(2) Waters off New Jersey—small mesh gillnet gear requirements and limitations. From January 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any small mesh gillnet gear in waters off New Jersey, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in waters off New Jersey with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) Floatline length. The floatline is no longer than 3,900 ft (1,188.7 m).

(ii) Twine size. The twine is at least 0.031 inches (0.081 cm) in diameter.

(iii) Size of nets. Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(v) Tie-down system. Tie-downs are prohibited.

(vi) Tagging requirements. Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(3) Southern Mid-Atlantic waters—large mesh gear requirements and limitations. From February 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear in Southern Mid-Atlantic waters, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in Southern Mid-Atlantic waters with large mesh sink gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) Floatline length. The floatline is no longer than 2118 ft (645.6 m).

(ii) Twine size. The twine is at least 0.03 inches (0.080 cm) in diameter.
(iii) **Size of nets.** Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) **Number of nets.** The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(v) **Tie-down system.** Tie-downs are prohibited.

(vi) **Tagging requirements.** Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(d) **Other special measures.** The Assistant Administrator may revise the requirements of this section through notification published in the **Federal Register** if:

(1) After plan implementation, NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch to the PBR level with the current plan.

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

PART 230—WHALING PROVISIONS

Sec.
230.1 Purpose and scope.
230.2 Definitions.
230.3 General prohibitions.
230.4 Aboriginal subsistence whaling.
230.5 Licenses for Aboriginal subsistence whaling.
230.6 Quotas and other restrictions.
230.7 Salvage of stinkers.
230.8 Reporting by whaling captains.

AUTHORITY: 16 U.S.C. 916 et seq.

SOURCE: 61 FR 29631, June 11, 1996, unless otherwise noted.

§ 230.1 Purpose and scope.


§ 230.2 Definitions.

Aboriginal subsistence whaling means whaling authorized by paragraph 13 of the Schedule annexed to and constituting a part of the Convention.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

Authorized officer means:
(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
(2) Any special agent or enforcement officer of the National Marine Fishery Service;
(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Whaling Convention Act; or
(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Calf means any whale less than 1 year old or having milk in its stomach.

Commission means the International Whaling Commission established by article III of the Convention.

Convention means the International Convention for the Regulation of Whaling signed at Washington on December 2, 1946.

Cooperative agreement means a written agreement between the National Oceanic and Atmospheric Administration and a Native American whaling organization for the cooperative management of Aboriginal subsistence whaling operations.

Landing means bringing a whale or any parts thereof onto the ice or land in the course of whaling operations.

Native American whaling organization means an entity recognized by the National Oceanic and Atmospheric Administration as representing and governing Native American whalers for the purposes of cooperative management of Aboriginal subsistence whaling.

Regulations of the Commission means the regulations in the Schedule annexed to and constituting a part of the Convention, as modified, revised, or amended by the Commission from time to time.

Stinker means a dead, unclaimed whale found upon a beach, stranded in shallow water, or floating at sea.

Strike means hitting a whale with a harpoon, lance, or explosive device.

Wasteful manner means a method of whaling that is not likely to result in the landing of a struck whale or that does not include all reasonable efforts to retrieve the whale.

Whale products means any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

Whaling means the scouting for, hunting, striking, killing, flensing, or landing of a whale, and the processing of whales or whale products.
§ 230.3

Whaling captain or captain means any Native American who is authorized by a Native American whaling organization to be in charge of a vessel and whaling crew.

Whaling crew means those Native Americans under the control of a captain.

Whaling village means any U.S. village recognized by the Commission as having a cultural and/or subsistence need for whaling.

§ 230.3 General prohibitions.

(a) No person shall engage in whaling in a manner that violates the Convention, any regulation of the Commission, or this part.

(b) No person shall engage in whaling without first having obtained a license or scientific research permit issued by the Assistant Administrator.

(c) No person shall ship, transport, purchase, sell, offer for sale, import, export, or possess any whale or whale products taken or processed in violation of the Convention, any regulation of the Commission, or this part, except as specified in § 230.4(f).

(d) No person shall fail to make, keep, submit, or furnish any record or report required of him/her by the Convention, any regulation of the Commission, or this part.

(e) No person shall refuse to permit any authorized officer to enforce the Convention, any regulation of the Commission, or this part.

§ 230.4 Aboriginal subsistence whaling.

(a) No person shall engage in aboriginal subsistence whaling, except a whaling captain licensed pursuant to §230.5 or a member of a whaling crew under the control of a licensed captain.

(b) No whaling captain shall engage in whaling that is not in accordance with the regulations of the Commission, this part, and the relevant cooperative agreement.

(c) No whaling captain shall engage in whaling for any calf or any whale accompanied by a calf.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in aboriginal subsistence whaling.

(f) No person may sell or offer for sale whale products from whales taken in an aboriginal subsistence hunt, except that authentic articles of Native handicrafts may be sold or offered for sale.

(g) No whaling captain shall continue to whale after:

(1) The quota set for his/her village by the relevant Native American whaling organization is reached;

(2) The license under which he/she is whaling is suspended as provided in §230.5(b); or

(3) The whaling season for that species has been closed pursuant to §230.6.

(h) No whaling captain shall claim domicile in more than one whaling village.

(i) No person may salvage a stinker without complying with the provisions of §230.7.

(j) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart that does not bear a permanent distinctive mark identifying the captain as the owner thereof.

(k) No whaling captain shall engage in whaling in a wasteful manner.

§ 230.5 Licenses for aboriginal subsistence whaling.

(a) A license is hereby issued to whaling captains identified by the relevant Native American whaling organization.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with the regulations in this part.

§ 230.6 Quotas and other restrictions.

(a) Quotas for aboriginal subsistence whaling shall be set in accordance with the regulations of the Commission. Quotas shall be allocated to each whaling village or captain by the appropriate Native American whaling organization. The Assistant Administrator shall publish in the FEDERAL REGISTER, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the Commission. These quotas and restrictions shall also be incorporated in the relevant cooperative agreements.
§ 230.8 Reporting by whaling captains.

(a) The relevant Native American whaling organization shall require each whaling captain licensed pursuant to §230.5 to provide a written statement of his/her name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance, and explosive dart.

(b) Each whaling captain shall provide to the relevant Native American whaling organization an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing of a whale and, where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

1. The number, dates, and locations of each strike, attempted strike, or landing.

2. The length (taken as the straight-line measurement from the tip of the upper jaw to the notch between the tail flukes) and the sex of the whales landed.

3. The length and sex of a fetus, if present in a landed whale.

4. An explanation of circumstances associated with the striking or attempted striking of any whale not landed.

(c) If the relevant Native American whaling organization fails to provide the National Marine Fisheries Service the required reports, the Assistant Administrator may require the reports to be submitted by the whaling captains directly to the National Marine Fisheries Service.
SUBCHAPTER E—TRANSPORTATION AND LABELING OF FISH OR WILDLIFE [RESERVED]
SUBCHAPTER F—AID TO FISHERIES

PART 253—FISHERIES ASSISTANCE PROGRAMS

Subpart A—General

§253.1 Purpose.

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of these rules governs the Fisheries Obligation Guarantee Program, which guarantees the repayment of certain long-term fisheries and aquacultural debts. This allows those debts to be placed in the same private investment market that buys U.S. Treasury securities, where interest rates are lower and maturities are longer. The Program does all credit work and holds and services all credit collateral. The Program’s guarantee fee makes it self-supporting.

(b) Subpart C implements Title III of Public Law 99-659 (16 U.S.C. 4100 et seq.), which has two objectives:

(1) To promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the exclusive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

Subpart B—Fisheries Obligation Guarantee Program

§253.10 Definitions.

The terms used in this subpart have the following meanings:

Act means Title XI of the Merchant Marine Act, 1936, as amended.

Actual cost means project cost (less a 10-percent salvage value), depreciated (excluding land) on a straightline basis at 1-year intervals over the project property’s useful life including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

Applicant means the one applying for a guarantee (the prospective notemaker).

Application means an application for a guarantee.

Application fee means 0.5 percent of the dollar amount of an application.

Aquacultural facility means land, land structures, water structures, water craft built in the U.S., and equipment for hatching, caring for, or growing fish under controlled circumstances.
and for its unloading, receiving, holding, processing, or distribution for commercial purposes.

CCF means Capital Construction Fund.

Citizen means a citizen or national of the U.S. who is otherwise also a citizen for the purpose of documenting a vessel in the coastwise trade under section 2 of the Shipping Act, 1916, as amended.

Contributory project means any project that contributes to developing the U.S. fishing industry by: Causing any vessel to catch less overutilized species than before; applying new technology; improving safety or fuel efficiency; making project property more efficient, productive, or competitive; potentially increasing fisheries exports; helping develop an underutilized fishery; or enhancing financial stability, financial performance, growth, productivity, or any other business attribute.

Demand means a noteholder’s request that the guarantor pay a guaranteed note’s full principal and interest balance.


Dual Use CCF means a CCF agreement whose qualified vessel is project property and whose deposits are pledged to repayment of the U.S. note.

Facility means a fisheries facility or aquacultural facility.

Financing means the first permanent debt placed on project property for financing its project cost.

Fish means all forms of aquatic animal and plant life, except marine mammals and birds.

Fishery facility means land, land structures, water craft that do not fish, and equipment used for transporting, unloading, receiving, holding, processing, or distributing fish for commercial purposes (including any fishery facility for passenger fishing).

Fishing means catching wild fish for commercial purposes (including passenger fishing).

Guarantee means the guarantor’s contractual promise, backed by the full faith and credit of the United States, to repay a guaranteed note if a notemaker fails to repay it as agreed.

Guarantee fee means 1 percent of a guaranteed note’s average annual unpaid principal balance.

Guaranteed note means a promissory note from a notemaker to a noteholder whose repayment the guarantor guarantees.

Guarantor means the U.S., acting, under the Act, by and through the Secretary of Commerce.

Industry means the fisheries and/or aquacultural industry.

Noteholder means a guaranteed note payee.

Notemaker means a guaranteed note payor.

Passenger fishing means carrying in vessels for commercial purposes passengers who catch fish.

Program means the Fisheries Obligation Guarantee Program.

Project means the construction of new project property or the refurbishing or purchase of used project property including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

Project property means the vessel or facility involved in a project whose actual cost is eligible under the Act for guarantee and controls the dollar amount of a guaranteed note.

Property means the project property and all other property pledged as security for a U.S. note.

Qualified means acceptable, in the Division’s credit risk judgment, and otherwise meeting the Division’s requirements for guarantee.

Refinancing means newer debt that either replaces older debt or reimburses applicants for previous expenditures.

Refinancing/assumption fee means 0.25 percent of the principal amount of a guaranteed note to be refinanced or assumed.

Refurbishing means any reconstruction, reconditioning, or other improvement of used project property involving more than routine repair or maintenance.

Security documents mean all collateral securing the U.S. note’s repayment and all other assurances, undertakings, and
contractual arrangements associated with the U.S. note.

Underutilized fishery means:
(1) For a vessel, any fish species harvested below its sustainable yield.
(2) For a fisheries facility, any facility using that species or any for which aggregate facilities are inadequate to best use harvests of that or any other species.

U.S. means the United States of America and, for citizenship purposes, includes the Commonwealth of Puerto Rico; American Samoa; the U.S. Virgin Islands; Guam; the Republic of the Marshall Islands; the Federated States of Micronesia; the Commonwealth of the Northern Mariana Islands; any other commonwealth, territory, or possession of the United States; or any political subdivision of any of them.

U.S. note means a promissory note payable by the notemaker to the guarantor.

Useful life means the period during which project property will, as determined by the Division, remain economically productive.

Vessel means any vessel documented under U.S. law and used for fishing.

Wise use means the wise use of fisheries resources and their development, advancement, management, conservation, and protection.

§ 253.11 Guarantee policy.
(a) A guarantee financing or refinancing up to 80 percent of a project’s actual cost shall be available to any qualified citizen otherwise eligible under the Act and these rules, except:
(1) Vessel construction. The Program will not finance this project cost. The Program will only refinance this project cost for an existing vessel whose previous construction cost has already been financed (or otherwise paid). Refinancing this project cost may be inconsistent with wise use, but financing it may be.
(2) Vessel refurbishing that materially increases an existing vessel’s harvesting capacity. The Program will not finance this project cost. The Program will only refinance this project cost for a vessel whose previous refurbishing cost has already been financed (or otherwise paid). Refinancing this project cost is not inconsistent with wise use, but financing it may be.
(3) Purchasing a used vessel or used fishery facility. The Program will neither finance nor refinance this project cost (except for a used vessel or fishery facility that the Program purchased and is reselling), unless the used vessel or fishery facility will be refurbished in the United States and will be a contributory project or it will be used in an underutilized fishery.
(b) Every project, other than those specified in paragraphs (a) (1) and (2) of this section, is consistent with wise use and every project, other than those specifically precluded in paragraphs (a) (1) and (2) of this section, may be financed, as well as refinanced.

(a) Guaranteed note—(1) Principal. This may not exceed 80 percent of actual cost, but may, in the Division’s credit judgment, be less.
(2) Maturity. This may not exceed 25 years, but shall not exceed the project property’s useful life and may, in the Division’s credit judgment, be less.
(3) Interest rate. This may not exceed the amount the Division deems reasonable.
(4) Prepayment penalty. The Division will allow a reasonable prepayment penalty, but the guarantor will not guarantee a notemaker’s payment of it.
(5) Form. This will be the simple promissory note (with the guarantee attached) the Division prescribes, promising only to pay principal, interest, and prepayment penalty.
(6) Sole security. The guaranteed note and the guarantee will be the noteholder’s sole security.
(b) U.S. note and security documents—(1) Form. The U.S. note and security documents will be in the form the Division prescribes.
(2) U.S. note. This exists to evidence the notemaker’s actual and contingent liability to the guarantor (contingent if the guarantor does not pay the guaranteed note (including any portion of it), on the notemaker’s behalf or if the guarantor does not advance any other amounts or incur any other expenses on the notemaker’s behalf to protect
§ 253.14

(a) Income and expense projections. The Division's conservative income and expense projections for the project property's operation must prospectively indicate net earnings that can service all debt, properly maintain the project property, and protect the U.S. against the industry's cyclical economics and other risks of loss.

(b) Working capital. The Division's conservative assessment of an applicant's financial condition must indicate initial working capital prospectively sufficient to provide for the project property to achieve net earnings projections, fund all foreseeable contingencies, and protect the U.S. At the Division's discretion, some portion of projected working capital needs may be met by something other than current assets minus current liabilities (i.e., by a line or letter of credit, non-current assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).
§ 253.15 Miscellaneous.

(a) Applicant. Only the legal title holder of project property (or the lessee of an appropriate long-term financing lease) may apply for a guarantee. Applicants must submit an “Application for Fisheries Obligation Program Guarantee” to the appropriate NMFS Regional Financial Services Branch to be considered for a guaranteed loan.

(b) Investigation and approval. The Division shall do a due diligence investigation of every application it accepts and determine if, in the Division’s sole judgment, the application is eligible and qualified. Applications the Division deems ineligible or unqualified will be declined. The Division will approve eligible and qualified applications based on the applicability of the information obtained during the application and investigation process to the programmatic goals and financial requirements of the program and under terms and conditions that, in the Division’s sole discretion, protect the U.S. The Division will state these terms and conditions in its approval in principal letter.

(c) Insurance. All property and other risks shall be continuously insured during the term of the U.S. note. Insurers must be acceptable to the Division. Insurance must be in such forms and amounts and against such risks as the Division deems necessary to protect the U.S. Insurance must be endorsed to include the requirements the U.S., as respects its interest only, deems necessary to protect the U.S. (e.g., the Program will ordinarily be an additional insured as well as the sole loss payee for the amount of its interest; cancellation will require 20 days’ advance written notice; vessel seaworthiness will be admitted, and the Program will be adequately protected against other insureds’ breaches of policy warranties, negligence, omission, etc.)

(d) Property inspections. The Division will require adequate condition and valuation inspection of all property as the basis for assessing the property’s worth and suitability for guarantee. The Division may also require these at specified periods during guarantee life. These must be conducted by competent and impartial inspectors acceptable to the Division. Inspection cost will be at an applicant’s expense. Those occurring before application approval may be included in actual cost.

(e) Guarantee terms and conditions. The Division’s approval in principle letter shall specify the terms and conditions of the guarantor’s willingness to guarantee. These shall be incorporated in closing documents that the Division prepares. Terms and conditions are at the Division’s sole discretion. An applicant’s nonacceptance will result in disqualification for guarantee.

(f) Noteholder. The Division will, as a gratuitous service, request parties interested in investing in guaranteed notes to submit offers to fund each prospective guaranteed note. The Division and the applicant will, by mutual consent, choose the responsive bidder, which ordinarily will be the prospective noteholder whose bid represents the lowest net effective annual cost of capital. Until the Division has closed the guarantee, arrangements between an applicant and a prospective noteholder are a matter of private contract between them, and the Program is not responsible to either for nonperformance by the other.

(g) Closing—(1) Approval in principle letters. Every closing will be in strict accordance with a final approval in principle letter.
§ 253.19

(2) **Contracts.** The guaranteed note, U.S. note, and security documents will ordinarily be on standard Program forms that may not be altered without Divisional approval. The Division will ordinarily prepare all contracts, except certain pledges involving real property, which will be prepared by each notemaker’s attorney at the direction and approval of the Division’s attorney.

(3) **Closing schedules.** The Division will ordinarily close guarantee transactions with minimal services from applicants’ attorneys, except where real property pledges or other matters appropriate for private counsel are involved. Real property services required from an applicant’s attorney may include: Title search, mortgage and other document preparation, execution and recording, escrow and disbursement, and a legal opinion and other assurances. An applicant’s attorney’s expense, and that of any other private contractor required, is for applicant’s account. Attorneys and other contractors must be satisfactory to the Division. The Division will attempt to meet reasonable closing schedules, but will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of being unable to meet an applicant’s and a prospective noteholder’s closing schedule. These parties should work closely with the Division to ensure a closing schedule the Division can meet.

§ 253.16 **Fees.**

(a) **Application fee.** The Division will not accept an application without the application fee. Fifty percent of the application fee is fully earned at application acceptance, and is not refundable. The rest is fully earned when the Division issues an approval in principal letter, and it is refundable only if the Division declines an application or an applicant requests refund before the Division issues an approval in principal letter.

(b) **Guarantee fee.** Each guarantee fee will be due in advance and will be based on the guaranteed note’s repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent one is due and payable on the guarantee closing’s anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) **Refinancing or assumption fee.** This fee applies only to refinancing or assuming existing guaranteed notes. It is due upon application for refinancing or assuming a guaranteed note. It is fully earned when due and shall be non-refundable. The Division may waive a refinancing or assumption fee’s payment when the refinancing or assumption’s primary purpose is to protect the U.S.

(d) **Where payable.** Fees are payable by check made payable to “NMFS/FSFF.” Other than those collected at application or closing, fees are payable by mailing checks to: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 73004, Chicago, Ill. 60673. To ensure proper crediting, each check must include the official case number the Division assigns to each guarantee.

§ 253.17 **Demand and payment.**

Every demand must be delivered in writing to the Division. Each must include the noteholder’s certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. Should the Division not acknowledge receipt of a timely demand, the noteholder must possess evidence of the demand’s timely delivery.

§ 253.18 **Program operating guidelines.**

The Division may issue Program operating guidelines, as the need arises, governing national Program policy and administrative issues not addressed by these rules.

§ 253.19 **Default and liquidation.**

Upon default of the security documents, the Division shall take such remedial action (including, where appropriate, liquidation) as it deems best able to protect the U.S.’ interest.
§ 253.20 Definitions.

The terms used in this subpart have the following meanings:


**Adopt** means to implement an interstate fishery management plan by State action or regulation.

**Commercial fishery failure** means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

1. The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or
2. Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

**Enforcement agreement** means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

**Federal fishery management plan** means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

**Fisheries management** means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

**Fishery resource** means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

**Interjurisdictional fishery resource** means:

1. A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or
2. A fishery resource for which an interstate or a Federal fishery management plan exists; or
3. A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

**Interstate Commission** means a commission or other administrative body established by an interstate compact.

**Interstate compact** means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

**Interstate Fisheries Research Program** means research conducted by two or more state agencies under a formal interstate agreement.

**Interstate fishery management plan** means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

**Landed** means the first point of offloading fishery resources.

**NMFS Regional Director** means the Director of any one of the five National Marine Fisheries Service regions.

**Project** means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

**Research** means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

**Secretary** means the Secretary of Commerce or his/her designee.

**State** means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

**State Agency** means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

**Value** means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.
§ 253.21 Apportionment.

(a) Apportionment formula. The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

\[
\frac{\text{Value of } X \text{ State}}{\text{Value of all States}} = B \text{ percent}
\]

\[
\frac{\text{Volume of } X \text{ State}}{\text{Volume of all States}} = A \text{ percent}
\]

\[
\frac{[A\% + B\%]}{2} = \text{State percentage used to determine state's share of the total available funds}
\]

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each state’s share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct NMFS Regional Directors to promptly notify states of funds’ availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State’s ratio under the apportionment formula in paragraph (b) of this section is less than one-third of 1 percent, that state may receive funding if the state:

(1) Is signatory to an interstate fishery compact;

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;

(3) Borders one or more of the Great Lakes;

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fishery management plan or an interstate fisheries research program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c) (1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) Unused apportionments. Any part of an apportionment for any fiscal year to any state:

(1) That is not obligated during that year;

(2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

§ 253.22 State projects.

(a) General—(1) Designation of state agency. The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized
in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) Evaluation of projects. The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) State matching requirements. The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies, in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) Financial assistance award. If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) Restrictions. (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to $25,000 each fiscal year may be awarded to a state out of the state’s regular apportionment to carry out an enforcement agreement. An enforcement agreement does not require state matching funds.

(f) Prosecution of work. All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

§ 253.23 Other funds.

(a) Funds for disaster assistance. (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states’ amount under the apportionment formula in §253.21(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.
(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster. Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State programs.

(b) Funds for interstate commissions. Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where:

(1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and

(2) For taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and

259.34 Minimum and maximum deposits; maximum time to deposit.

259.35 Annual deposit and withdrawal reports required.

259.36 CCP accounts.

259.37 Conditional consents to withdrawal qualification.

259.38 Miscellaneous.


JOINT TAX REGULATIONS

§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where:

(1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and

(2) For taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1973, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1973 (or, if earlier, 60 days after the publication of final joint regulations under section 607 of the Merchant Marine Act, 1936, as amended); then such a capital construction fund agreement will be deemed to be effective as of the close of business of the last regular business day of each such taxable year or years to which such deposit related.
§ 259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").

(a) General qualifications. To be eligible to enter into an Interim CCF Agreement an applicant must:

(1) Be a citizen of the United States (citizenship requirements are those for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(2) Own or lease one or more eligible vessels (as defined in section 607(k)(1) of the Act) operating in the foreign or domestic commerce of the United States.

(b) Content of application. Applicants seeking an Interim CCF Agreement may make application by letter providing the following information:

(1) Proof of U.S. citizenship;

(2) The first taxable year for which the Interim CCF Agreement is to apply (see §259.33 for the latest time at which applications for an Interim CCF Agreement relating to a previous taxable year may be received);

(3) The following information regarding each “eligible vessel” which is to be incorporated in Schedule A of the Interim CCF Agreement for purposes of making deposits into a CCF pursuant to section 607 of the Act:

(i) Name of vessel,

(ii) Date of construction of vessel,

(iii) Description of vessel,

(iv) Current location of vessel,

(v) U.S. Coast Guard documentation number (if any),

(vi) U.S. Coast Guard documentation date (if any),

(vii) Current and past use of vessel,

(viii) Whether the vessel is a commercial vessel engaged in the fisheries of the United States,

(ix) Whether the vessel is a vessel engaged in the coastwise trade,

(x) Whether the vessel is a vessel engaged in the coastwise trade and the fisheries of the United States,

(xi) Whether the vessel is a vessel engaged in the coastwise trade of the United States,

(xii) Whether the vessel is a vessel engaged in the fisheries of the United States.

CAPITAL CONSTRUCTION FUND AGREEMENT

SOURCE: Sections 259.30 to 259.38 appear at 39 FR 3675, Sept. 19, 1974, unless otherwise noted.
(ii) Official number, or, in the case of vessels under 5 net tons, the State registration number where required.

(iii) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.).

(iv) General characteristic (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried or in the case of vessels operating in the foreign or domestic commerce the various uses of the vessel, etc.).

(v) Whether owned or leased and, if leased, the name of the owner, and a copy of the lease.

(vi) Date and place of construction.

(vii) Whether rebuilt and, if rebuilt, date of redelivery and place of reconstruction.

(viii) Trade (or trades) in which vessel is documented and date last documented.

(ix) If a fishing vessel, the fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common names—of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch).

(x) If a fishing vessel, the area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources).

(4) The specific objectives to be achieved by the accumulation of assets in a Capital Construction Fund (to be incorporated in Schedule B of the Interim CCF Agreement) including:

(i) Number of vessels,

(ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessel),

(iii) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried),

(iv) Cost of projects,

(v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidences of the indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF under an Interim CCF Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),

(vi) Date of construction, acquisition, or reconstruction.

(vii) Fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common name—of fish, shellfish, or other living marine resources).

(viii) Area of operation (which in this section means the general geographic areas in which each vessel will operate for each species or group of species of fish, shellfish, or other living marine resources).

(c) Filing. The application must be signed and submitted in duplicate to the Regional Office of the National Marine Fisheries Service’s Financial Assistance Division corresponding to the region in which the party conducts its business. As a general rule, the Interim CCF Agreement must be executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant’s best interest to file at least 45 days in advance of such date.


§ 259.31 Acquisition, construction, or reconstruction.

(a) Acquisition. No vessel having previously been operated in a fishery of the United States prior to its acquisition by the party seeking CCF withdrawal therefor shall be a qualified vessel for the purpose of acquisition, except in the cases specified in paragraphs (a)(1) and (2) of this section.

(1) A vessel not more than 5 years old, at the time of its acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if each acquisition in this category becomes a Schedule A vessel and there
§ 259.31  

exists for each acquisition in this category (on a one-for-one basis) an additional Schedule B construction or reconstruction. The sole consideration for permitting an acquisition in this category is that it will enable the party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the additional Schedule B construction or reconstruction. Should this consideration materially fail, the Secretary shall, at his discretion, disqualify previously qualified withdrawals in this category, seek liquidated damages as provided for in paragraph (a)(4) of this section and/or terminate the Interim CCF Agreement.

(2) A vessel more than 5 years old, but not more than 25 years old (special showing required if more than 25 years old, see paragraph (b) of this section), at the time of acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if that same vessel becomes a Schedule A vessel and (in addition to being a Schedule B vessel for the purpose of its acquisition) becomes a Schedule B vessel for the purpose of that same vessel's reconstruction to be accomplished ordinarily within 7 years from the date of acquisition. The sole consideration for permitting an acquisition in this category is that it will enable a party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the Schedule B reconstruction of the vessel so acquired. Should this consideration materially fail, the same penalty prescribed in paragraph (a)(1) of this section applies.

(3) Reserved for minimum deposits under this section.

(4) Reserved for liquidated damages.

(b) Reconstruction. No reconstruction project costing less than $100,000 shall qualify a vessel for reconstruction, unless the reconstruction project costs, or will cost, 20 percent or more of the reconstructed vessel's acquisition cost (in its unreconstructed state) to the party seeking CCF withdrawal therefor. If the reconstruction project meets the $100,000 test, then the 20 percent test applies. Conversely, if the reconstruction project does not meet the $100,000 test, then the 20 percent test applies.

(1) Reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. A reconstruction project must, however, substantially prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

(2) All, or the major portion (ordinarily, not less than 80 percent), of a reconstruction project's actual cost must (for the purpose of meeting the above dollar or percentage tests) be classifiable as a capital expenditure for Internal Revenue Service (IRS) purposes. That otherwise allowable (i.e., for the purpose of meeting the above dollar or percentage tests) portion of a reconstruction project's actual cost which is not classifiable as a capital expenditure shall, however, be excluded from the amount qualified for withdrawal as a result of the reconstruction project.

(3) No vessel more than 25 years old at the time of withdrawal or request for withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life at least 10 years beyond the date reconstruction is completed.

(c) Time permitted for construction or reconstruction. Construction or reconstruction must be completed within 18 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

(d) Energy saving improvements. An improvement made to a vessel to conserve energy shall, regardless of cost, be treated as a reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure and shall be exempted from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32 and from all qualifying tests for reconstruction set forth in paragraph (b) of this section with the following exceptions:
(1) An energy saving improvement shall be required to meet both conditional fishery requirements and the qualifying tests for reconstruction if it serves the dual purpose of saving energy and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel.

(2) That portion of the actual cost of an energy saving improvement which is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes.

(e) Safety projects. The acquisition and installation of safety equipment for a qualified vessel and vessel modifications whose central purpose is materially increasing the safety of a qualified vessel or the acquisition and installation of equipment required by law or regulation that materially increases the safety of a qualified vessel shall, regardless of cost, be treated as reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure, shall be exempt from having to meet conditional fishery requirements for reconstruction as set forth in §259.32, and shall be exempt from all qualifying tests for reconstruction set forth in paragraph (b) of this section, with the following exceptions:

(1) A safety improvement shall be required to meet both conditional fishery requirements and all qualifying tests for reconstruction if it serves the dual purpose of safety and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel;

(2) That portion of the actual cost of a safety improvement that is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes;

(3) Safety improvement projects whose clear and central purpose is restricted to complying with the requirements of the Commercial Fishing Industry Vessel Safety Act of 1988 (Public Law 100–424 Sec. 1, 102 stat. 1585 (1988) (codified in scattered sections of 46 U.S.C.)) shall, without further documentation, be considered to fall within this paragraph (e). Satisfactory documentation will be required for all other projects proposed to be considered as falling within this paragraph (e). Projects not required by law or regulation whose central purpose clearly involves something other than an improvement that materially increases the safety of a vessel will not be considered to fall within this paragraph (e).

§259.32 Conditional fisheries.

(a) The Secretary may from time-to-time establish certain fisheries in which CCF benefits will be restricted. The regulatory mechanism for doing so is part 251 of this chapter. Each fishery so restricted is termed a “conditional fishery”. Subpart A of part 251 of this chapter establishes the procedure to be used by the Secretary in proposing and adopting a fishery as a conditional fishery. Subpart B of part 251 of this chapter enumerates each fishery actually adopted as a conditional fishery (part 251 of this chapter should be referred to for details). The purpose of this §259.32 is to establish the effect of conditional fishery adoption upon Interim CCF Agreements.

(b) If a written request for an otherwise permissible action under an Interim CCF Agreement, in which CCF benefits will be restricted, is submitted prior to the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the subsequent adoption of a conditional fishery (even, if that adoption occurs before the Secretary gives his consent or issues an Interim CCF Agreement or amendment thereto, all as the case may be). Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(c) If a written request for an otherwise permissible action under an Interim CCF Agreement, or an application for an Interim CCF Agreement, is submitted after the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the previous adoption of a conditional fishery.
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provided, however, that this paragraph shall apply only to construction or reconstruction for which a binding contract has been reduced to writing prior to the date upon which conditional fishery adoption occurred. Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(d) Conditional fishery adoption shall have no effect whatsoever upon a Schedule B objective whose qualification for withdrawal (which may be in an amount equal to the total cost over time of a Schedule B objective, i.e., a series of withdrawals) has been, prior to the date of conditional fishery adoption, either consented to by the Secretary or requested in accordance with paragraph (b) or (c) of this section. This extends to past, present, and future withdrawals in an amount representing up to 100 percent of the cost of a Schedule B objective. Commencement of any project in these categories shall, however, be started not later than 6 months from the date of conditional fishery adoption and shall be completed within 24 months from the date of conditional fishery adoption, unless for good and sufficient cause shown the Secretary, at his discretion, consents to a longer period for either project commencement or completion. Consent to the qualification of withdrawal for any project in these categories not commenced or completed within the periods allowed shall be revoked at the end of the periods allowed.

(e) Conditional fishery adoption shall have no effect whatsoever upon Schedule B objectives which will not result in significantly increasing harvesting capacity in a fishery adopted as a conditional fishery.

(1) Construction of a new vessel (“Z”’) for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the party causing the “Y” vessel to be constructed causes (within 1 year after the delivery of vessel “Y”) to be permanently removed from all fishing, or placed permanently in a fishery not then adopted as a conditional fishery, under such conditions as the Secretary may deem necessary or desirable, a vessel (vessel “Z”) which has during the previous 18 months operated substantially in the same fishery as the “Y” vessel and which has a fishing capacity substantially equivalent to the “Y” vessel. Failure to remove a vessel could subject all withdrawals to be treated as nonqualified and may be cause for termination of the CCF. What constitutes substantially equivalent fishing capacity shall be a matter for the Secretary’s discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration (i) the average size of vessels constructed for the adopted conditional fishery in question at the time vessel “Z” was constructed (or, if constructed for a different fishery, the average size of vessels in the adopted conditional fishery at the time vessel “Y” was or will be constructed, and (iii) such other factors as the Secretary may deem material and equitable, including the length of time the party had owned or leased vessel “Z” and the length of time the vessel has operated in the conditional fishery. The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who have owned or leased for substantial periods vessels which need to be replaced, even though a “Z” vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a “Y” vessel at the time of its construction.

(2) Acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the vessel to be acquired and/or reconstructed had during the previous 3 years operated substantially in the same fishery as the adopted conditional fishery in which it will operate after acquisition and/or reconstruction. If less than 3 years, then acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that
fishery unless there occurs vessel removal or permanent placement elsewhere under the same conditions specified for construction in paragraph (e)(1) of this section.

(3) Construction of a new vessel or the acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall not be deemed to significantly increase the harvesting capacity where the vessel constructed, acquired and/or reconstructed replaces another vessel which was lost or destroyed and which had, immediately prior to the loss or destruction, operated in the same fishery as the adopted conditional fishery, provided, however, that the fishing capacity of the replacement vessel has a fishing capacity substantially equivalent to the vessel lost or destroyed and that the construction, acquisition and/or reconstruction is completed within 2 years after the close of the taxable year in which the loss or destruction occurred. The Secretary may, at his discretion, and for good and sufficient cause shown, extend the replacement period, provided that the request for extension of time to replace is timely filed with the Secretary.

(f) Conditional fishery adoption shall have the following effect on all Schedule B objectives (whether for acquisition, construction, or reconstruction) which the Secretary deems to significantly increase harvesting capacity in that fishery, excluding those circumstances specifically exempted by paragraphs (b) through (e) of this section (which shall be governed by the provisions of paragraphs (b) through (e) of this section).

(1) The Secretary may nevertheless consent to the qualification of withdrawal, but only up to an amount not exceeding the total of eligible ceilings actually deposited during tax years other than the taxable year in which conditional fishery adoption occurs plus a pro-rata portion of eligible ceilings generated in the tax year in which conditional fishery adoption occurs. Pro-ration shall be according to the number of months or any part thereof in a party’s tax year which elapse before the adoption of the conditional fishery occurs. For example, if a party’s tax year runs from January 1, 1974, to December 31, 1974, and conditional fishery adoption occurs on August 15, 1974, (i.e., during the 8th month of the party’s tax year), then the pro-rata portion for that year is eight-twelfths of the total eligible ceilings generated during that year.

(2) Qualified withdrawals in excess of the amount specified in paragraph (f)(1) of this section shall not, during the continuance of the adopted conditional fishery, be consented to. Parties at this point shall have the following option:

(i) Make, with the Secretary’s consent, a nonqualified withdrawal of the excess and discontinue the future deposit of eligible ceilings (which may effect termination of the Interim CCF Agreement).

(ii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective not then involving an adopted conditional fishery. If amendment of an Interim CCF Agreement is necessary in order to include a Schedule B objective not then involving an adopted conditional fishery, the party may, with the Secretary’s consent, make the necessary amendment.

(iii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective involving a then adopted conditional fishery in anticipation that the then adopted conditional fishery will eventually be disadopted, in which case all deposits of eligible ceilings will once again be eligible for the Secretary’s consent as qualified withdrawals. If the adoption of a conditional fishery continues for a substantial length of time and there is no foreseeable prospect of disadoption, then the Secretary, in his discretion, may require paragraph (f)(2)(i) or (ii) of this section to be effected.

(g) The Secretary shall neither enter into a new Interim CCF Agreement, nor permit amendment of an existing one, which involves a Schedule B objective in a then adopted conditional fishery unless paragraph (b), (c) or (d) of this §259.32 applies or unless the Schedule B objective is expressly conditioned upon acquisition construction, or reconstruction of the type permitted under paragraph (e) of this §259.32. Such an express condition would not survive beyond the time at which conditional fishery status is removed.
§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.

(a) Periods controlling permissibility. For the purpose of this §259.33, the period between the beginning and the end of a party’s tax year is designated “Period (aa)”; the period between the end of a party’s tax year and the party’s tax due date for that tax year is designated “Period (bb)”; the period between the party’s tax due date and the date on which ends the party’s last extension (if any) of that tax due date is designated “Period (cc)”. 

(b) Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date). Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an Interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: Provided, The applicant’s application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary’s execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). 

(d) Ratification of withdrawals (as qualified) made without first having obtained Secretary’s consent. The Secretary may ratify as qualified any withdrawal made without first having obtained the Secretary’s consent thereafter, provided the withdrawal was such as would have resulted in the Secretary’s consent had it been requested before withdrawal, and provided further that the party’s request for consent (together with sufficient supporting data to enable the Secretary’s issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). 

(1) If, however, the Secretary receives the request in proper form so close to the latest permissible period that the Interim CCF Agreement cannot be executed and/or the consent given before the end of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Interim CCF Agreement and issue his consent however long past the applicant’s Period (bb) or Period (cc), whichever applies, the Secretary’s administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the applicant’s having failed to apply in a more timely fashion.
(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary’s consent 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary’s consent, in reliance on obtaining the Secretary’s consent, are made purely at a party’s own risk. Should any withdrawal made without the Secretary’s consent prove, for any reason, to be one to which the Secretary will not or cannot consent by ratification, then the result will be either, or both, at the Secretary’s discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without having first obtained the Secretary’s consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement’s Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary’s consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary’s consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a non-qualified withdrawal adversely affects the Interim CCF Agreement’s general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) First tax year for which Interim CCF Agreement is effective. An Agreement, to be effective for any party’s Period (aa), must be executed and entered into by the party, and submitted to the Secretary, before the end of Period (bb) or Period (cc), whichever applies, for such Period (aa). If executed and entered into by the party, and/or received by the Secretary, after the end of Period (bb) or Period (cc), whichever applies, then the Agreement will be first effective for the next succeeding Period (aa).

(1) If, however, the Secretary receives an Agreement executed and entered into by the party in proper form so close to the latest permissible period that the Secretary cannot execute the Agreement before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Agreement however long past the party’s Period (bb) or Period (cc), whichever applies, the Secretary’s administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party’s having failed to apply in a more timely manner.

(2) All parties shall be counseled that it is manifestly in their best interest to enter into and execute an Agreement, and submit the same to the Secretary, at least 45 days in advance of the Period (bb) or Period (cc), whichever applies, for the Period (aa) for which the Agreement is first intended to be effective.

§ 259.34 Minimum and maximum deposits; maximum time to deposit.

(a) Minimum annual deposit. The minimum annual (based on each party’s taxable year) deposit required by the Secretary in order to maintain an Interim CCF Agreement shall be an amount equal to 2 percent of the total anticipated cost of all Schedule B objectives unless such 2 percent exceeds during any tax year 50 percent of a party’s Schedule A taxable income, in which case the minimum deposit for that year shall be 50 percent of the party’s Schedule A taxable income.

(1) Minimum annual deposit compliance shall be audited at the end of each party’s taxable year unless any one or more of the Schedule B objectives is scheduled for commencement more than 3 taxable years in advance of the taxable year in which the agreement is
§ 259.35 Annual deposit and withdrawal reports required.

(a) The Secretary will require from each Interim CCF Agreement holder (Party) the following annual deposit and withdrawal reports. Failure to submit such reports may be cause for involuntary termination of CCF Agreements.

(1) A preliminary deposit and withdrawal report at the end of each calendar year, which must be submitted not later than 45 days after the close of the calendar year. The report must give the amounts withdrawn from and deposited into the party’s CCF during the subject year, and be in letter form showing the agreement holder’s name, FVCCF identification number, and taxpayer identification number. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and the account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity. If the party’s tax year is the same as the calendar year, and if the final deposit and withdrawal report required under paragraph (a)(2) of this section is submitted before the due date for this preliminary report, then this report is not required.

(2) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, with extensions (if any), for filing the party’s Federal Income tax return. The report must be made on a form prescribed by the Secretary using a separate form for each FVCCF depository. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary’s discretion.

(c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party’s tax due date, with extensions (if any), a copy of the party’s Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse
§ 259.36 CCF accounts.

(a) General: Each CCF account in each scheduled depository shall have an account number, which must be reflected on the reports required by § 259.35. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF and non-CCF transactions and there shall be no pooling of 2 or more CCF accounts without prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary’s consent and then only under such conditions as the Secretary, in his discretion, prescribes.

(b) Assignment: The use of Fund assets for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) Depositaries: (1) Section 607(c) of the Act provides that amounts in a CCF must be kept in the depository or depositories specified in the Agreement and be subject to such trustee or other fiduciary requirements as the Secretary may specify.

(2) Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

(3) Non-cash deposits or investments of the Fund should be placed in control of a trustee under the following conditions:

(i) The trustee should be specified in the Agreement;

(ii) The trust instrument should provide that all investment restrictions stated in section 607(c) of the Act will be observed;

(iii) The trust instrument should provide that the trustee will give consideration to the party’s withdrawal requirements under the Agreement when investing the Fund;

(iv) The trustee must agree to be bound by all rules and regulations which have been or will be promulgated governing the investment or management of the Fund.

§ 259.37 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of withdrawal, such consent being conditional upon the timely submission to the Secretary of such further proofs, assurances, and advice as the Secretary, in his discretion, may require. Failure of a party to comply with the conditions of such a consent within a reasonable time and after due notice shall, at the Secretary’s discretion, be cause for either, or both, nonqualification of withdrawal or involuntary Interim CCF Agreement termination.

§ 259.38 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the postmark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.

(b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can often cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should before the fact attempt to act in reliance on its being granted after the fact.
§ 259.38

(d) These §§259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§259.30 through 259.38 are adopted. These §§259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§259.30 through 259.38 are adopted, with the following exceptions only:

(1) The vessel age limitations imposed by §259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by §259.34 shall not apply to any party’s tax year before that party’s tax year next following the one in which these §§259.30 through 259.38 are adopted.

(e) These §§259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.
PART 260—INSPECTION AND CERTIFICATION

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

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§ 260.1 Administration of regulations.

The Secretary of Commerce is charged with the administration of the regulations in this part except that he may delegate any or all of such functions to any officer or employee of the National Marine Fisheries Service of the Department in his discretion.1

[36 FR 21037, Nov. 3, 1971]

DEFINITIONS

§ 260.6 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall have the following meanings:

Acceptance number. “Acceptance number” means the number in a sampling plan that indicates the maximum number of deviants permitted in a sample of a lot that meets a specific requirement.


Applicant. “Applicant” means any interested party who requests inspection service under the regulations in this part.

Case. “Case” means the number of containers (cased or uncased) which, by the particular industry are ordinarily packed in a shipping container.

Certificate of loading. “Certificate of loading” means a statement, either written or printed, issued pursuant to the regulations in this part, relative to check-loading of a processed product subsequent to inspection thereof.

Certificate of sampling. “Certificate of sampling” means a statement, either written or printed issued pursuant to the regulations in this part, identifying officially drawn samples and may include a description of condition of containers and the condition under which the processed product is stored.

Class. “Class” means a grade or rank of quality.

Condition. “Condition” means the degree of soundness of the product which may affect its merchantability and includes, but is not limited to those factors which are subject to change as a result of age, improper preparation and processing, improper packaging, improper storage, or improper handling.

Department. “Department” means the U.S. Department of Commerce.

Deviant. “Deviant” means a sample unit affected by one or more deviations or a sample unit that varies in a specifically defined manner from the requirements of a standard, specification, or other inspection document.

Deviation. “Deviation” means any specifically defined variation from a particular requirement.

Director. “Director” means the Director of the National Marine Fisheries Service.
Establishment. “Establishment” means any premises, buildings, structures, facilities, and equipment (including vehicles) used in the processing, handling, transporting, and storage of fish and fishery products.

Inspection certificate. “Inspection certificate” means a statement, either written or printed, issued pursuant to the regulations in this part, setting forth in addition to appropriate descriptive information relative to a processed product, and the container thereof, the quality and condition, or any part thereof, of the product and may include a description of the conditions under which the product is stored.

Inspection service. “Inspection service” means:

1. The sampling pursuant to the regulations in this part;
2. The determination pursuant to the regulations in this part of:
   i. Essential characteristics such as style, type, size, or identity of any processed product which differentiates between major groups of the same kind;
   ii. The class, quality, and condition of any processed product, including the condition of the container thereof by the examination of appropriate samples;
3. The issuance of any certificate of sampling, inspection certificates, or certificates of loading of a processed product, or any report relative to any of the foregoing; or
4. Performance by an inspector of any related services such as to observe the preparation of the product from its raw state through each step in the entire process; or observe conditions under which the product is being harvested, prepared, handled, stored, processed, packed, preserved, transported, or held; or observe sanitation as a prerequisite to the inspection of the processed product, either on a contract basis or periodic basis; or checkload the inspected processed product in connection with the marketing of the product, or any other type of service of a consultative or advisory nature related herewith.

Inspector. “Inspector” means any employee of the Department authorized by the Secretary or any other person licensed by the Secretary to investigate, sample, inspect, and certify in accordance with the regulations in this part to any interested party the class, quality and condition of processed products covered in this part and to perform related duties in connection with the inspection service.

Interested party. “Interested party” means any person who has a financial interest in the commodity involved.

Licensed sampler. “Licensed sampler” means any person who is authorized by the Secretary to draw samples of processed products for inspection service, to inspect for identification and condition of containers in a lot, and may, when authorized by the Secretary, perform related services under the act and the regulations in this part.

Lot. “Lot” has the following meanings:

1. For the purpose of charging fees and issuing certificates, “Lot” means any number of containers of the same size and type which contain a processed product of the same type and style located in the same or adjacent warehouses and which are available for inspection at any one time: Provided, That:
   i. Processed products in separate piles which differ from each other as to grade or other factors may be deemed to be separate lots;
   ii. Containers in a pile bearing an identification mark different from other containers in that pile, if determined to be of lower grade or deficient in other factors, may be deemed to be a separate lot; and
   iii. If the applicant requests more than one inspection certificate covering different portions of such processed product, the quantity of the product covered by each certificate shall be deemed to be a separate lot.

2. For the purpose of sampling and determining the grade or compliance with a specification, “Lot” means each pile of containers of the same size and type containing a processed product of the same type and style which is separated from other piles in the same warehouse, but containers in the same pile bearing an identification mark different from other containers in that...
§ 260.7 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946 provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

Sample. “Sample” means any number of sample units to be used for inspection.

Sample unit. “Sample unit” means a container and/or its entire contents, a portion of the contents of a container or other unit of commodity, or a composite mixture of a product to be used for inspection.

Sampling. “Sampling” means the act of selecting samples of processed products for the purpose of inspection under the regulations in this part.

Secretary. “Secretary” means the Secretary of the Department or any other officer or employee of the Department authorized to exercise the powers and to perform the duties of the Secretary in respect to the matters covered by the regulations in this part.

Shipping container. “Shipping container” means an individual container designed for shipping a number of packages or cans ordinarily packed in a container for shipping or designed for packing unpackaged processed products for shipping.

Unofficially drawn sample. “Unofficially drawn sample” means any sample that has been selected by any person other than an inspector or licensed sampler, or by any other person not authorized by the Director pursuant to the regulations in this part.

Wholesome. “Wholesome” means the minimum basis of acceptability for human food purposes, of any fish or fishery product as defined in section 402 of the Federal Food, Drug, and Cosmetic Act, as amended.

Official certificate. "Official certificate" means any form of certification, either written or printed, including those defined in §260.6, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

Official device. "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Director for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

Official identification. "Official identification" means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Director and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

Official mark. "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, including those prescribed in §260.86, approved by the Secretary and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U.S. Grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part.

Official memorandum. "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

INSPECTION SERVICE

§260.12 Where inspection service is offered.
Inspection service may be furnished wherever an inspector or licensed sampler is available and the facilities and conditions are satisfactory for the conduct of such service.

§260.13 Who may obtain inspection service.
An application for inspection service may be made by any interested party, including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent in behalf of the foregoing.

§260.14 How to make application.
An application for inspection service may be made to the officer of inspection or to any inspector, at or nearest the place where the service is desired. An up-to-date list of the Inspection Field Offices of the Department may be obtained upon request to the Director. Satisfactory proof that the applicant is an interested party shall be furnished.

§260.15 Information required in connection with application.
Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by telegraph. If an application for inspection service is made orally, such application shall be confirmed promptly in writing. In connection with each application for inspection service, there shall be furnished such information as may be necessary to perform an inspection on the processed product for which application for inspection is made, including but not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or car number, codes or other identification marks, the number of containers, the type and size of the containers, the interest of the applicant in the product, whether the lot has been inspected previously to the application by any Federal agency and the purpose for which inspection is desired.
§ 260.16 Filing of application.

An application for inspection service shall be regarded as filed only when made in accordance with the regulations in this part.

§ 260.17 Record of filing time.

A record showing the date and hour when each application for inspection or for an appeal inspection is received shall be maintained.

§ 260.18 When application may be rejected.

An application for inspection service may be rejected by the Secretary (a) for noncompliance by the applicant with the regulations in this part, (b) for nonpayment for previous inspection services rendered, (c) when the product is not properly identifiable by code or other marks, or (d) when it appears that to perform the inspection service would not be to the best interests of the Government. Such applicant shall be promptly notified of the reason for such rejection.

§ 260.19 When application may be withdrawn.

An application for inspection service may be withdrawn by the applicant at any time before the inspection is performed: Provided, That, the applicant shall pay at the hourly rate prescribed in §260.70 for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph or other expenses which have been incurred by the inspection service in connection with such application.


§ 260.20 Disposition of inspected sample.

Any sample of a processed product that has been used for inspection may be returned to the applicant, at his request and expense; otherwise it shall be destroyed, or disposed of to a charitable institution.

§ 260.21 Basis of inspection and grade or compliance determination.

(a) Inspection service shall be performed on the basis of the appropriate U.S. standards for grades of processed products, Federal, Military, Veterans Administration or other government agency specifications, written contract specification, or any written specification or instruction which is approved by the Secretary.

(b) Unless otherwise approved by the Director compliance with such grade standards, specifications, or instructions shall be determined by evaluating the product, or sample, in accordance with the requirements of such standards, specifications, or instructions: Provided, That when inspection for quality is based on any U.S. grade standard which contains a scoring system the grade to be assigned to a lot is the grade indicated by the average of the total scores of the sample units: Provided further, That:

(1) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(2) Such sample complies with the product description;

(3) Such sample meets the indicated grade with respect to factors of quality which are not rated by score points; and

(4) With respect to those factors of quality which are rated by score points, each of the following requirements is met:

(i) None of the sample units falls more than one grade below the indicated grade because of any quality factor to which a limiting rule applies;

(ii) None of the sample units falls more than 4 score points below the minimum total score for the indicated grade;

(iii) The number of sample units classed as deviants does not exceed the applicable acceptance number indicated in the sampling plans contained in §260.61. A “deviant,” as used in this paragraph, means a sample unit that falls into the next grade below the indicated grade but does not score more than 4 points below the minimum total score for the indicated grade.

(5) If any of the provisions contained in paragraphs (b)(3) and (4) of this section are not met the grade is determined by considering such provisions in connection with succeedingly lower grades.

§ 260.29 Disposition of inspection certificates.

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall

grades until the grade of the lot, if assignable, is established.

§ 260.22 Order of inspection service.

Inspection service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

§ 260.23 Postponing inspection service.

If the inspector determines that it is not possible to accurately ascertain the quality or condition of a processed product immediately after processing because the product has not reached equilibrium in color, or drained weight, or for any other substantial reason, he may postpone inspection service for such period as may be necessary.

§ 260.24 Financial interest of inspector.

No inspector shall inspect any processed product in which he is directly or indirectly financially interested.

§ 260.25 Forms of certificates.

Inspection certificates, certificates of sampling or loading, and other memoranda concerning inspection service shall be issued on forms approved by the Secretary.

§ 260.26 Issuance of certificates.

(a) An inspection certificate may be issued only by an inspector: Provided, That, another employee of the inspection service may sign such certificate of loading covering any processed product checkloaded by an inspector or licensed sampler when given power of attorney by such inspector or licensed sampler and authorized by the Secretary to affix the inspector’s or licensed sampler’s signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

(b) A certificate of loading shall be issued and signed by the inspector or licensed sampler authorized to check the loading of a specific lot of processed products: Provided, That, another employee of the inspection service may sign such certificate of loading covering any processed product checkloaded by an inspector or licensed sampler when given power of attorney by such inspector or licensed sampler and authorized by the Secretary to affix the inspector’s or licensed sampler’s signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

§ 260.27 Issuance of corrected certificates.

A corrected inspection certificate may be issued by the inspector who issued the original certificate after distribution of a certificate if errors, such as incorrect dates, code marks, grade statements, lot or car numbers, container sizes, net or drained weights, quantities, or errors in any other pertinent information require the issuance of a corrected certificate. Whenever a corrected certificate is issued, such certificate shall supersede the inspection certificate which was issued in error and the superseded certificate shall become null and void after the issuance of the corrected certificate.

§ 260.28 Issuance of an inspection report in lieu of an inspection certificate.

A letter report in lieu of an inspection certificate may be issued by an inspector when such action appears to be more suitable than an inspection certificate: Provided, That, the issuance of such report is approved by the Secretary.

§ 260.29 Disposition of inspection certificates.

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall
§ 260.30 Report of inspection results prior to issuance of formal report.

Upon request of any interested party, the results of an inspection may be telegraphed or telephoned to him, or to any other person designated by him, at his expense.

§ 260.33 When appeal inspection may be requested.

An application for an appeal inspection may be made by any interested party who is dissatisfied with the results of an inspection as stated in an inspection certificate, if the lot of processed products can be positively identified by the inspection service as the lot from which officially drawn samples were previously inspected. Such application shall be made within thirty (30) days following the day on which the previous inspection was performed, except upon approval by the Secretary the time within which an application for appeal inspection may be made, may be extended.

§ 260.37 Where to file for an appeal inspection and information required.

(a) Application for an appeal inspection may be filed with:

(1) The inspector who issued the inspection certificate on which the appeal covering the processed product is requested; or

(2) The inspector in charge of the office of inspection at or nearest the place where the processed product is located.

(b) The application for appeal inspection shall state the location of the lot of processed products and the reasons for the appeal; and date and serial number of the certificate covering inspection of the processed product on which the appeal is requested, and such application may be accompanied by a copy of the previous inspection certificate and any other information that may facilitate inspection. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation shall be made promptly.

§ 260.38 When an application for an appeal inspection may be withdrawn.

An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: Provided, That the applicant shall pay at the hourly rate prescribed in §260.70, for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph, or other expenses which have been incurred by the inspection service in connection with such application.

§ 260.39 When appeal inspection may be refused.

An application for an appeal inspection may be refused if:

(a) The reasons for the appeal inspection are frivolous or not substantial;

(b) The quality or condition of the processed product has undergone a material change since the inspection covering the processed product on which the appeal inspection is requested;

(c) The lot in question is not, or cannot be made accessible for the selection of officially drawn samples;

(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspector as the lot from which officially drawn samples were previously inspected; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

§ 260.40 Who shall perform appeal inspection.

An appeal inspection shall be performed by an inspector or inspectors (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Secretary and, whenever practical, such appeal inspection shall be conducted jointly by two such inspectors: Provided, That the inspector who made the inspection on which the appeal is requested may be authorized to draw the samples when
another inspector or licensed sampler is not available in the area where the product is located.

§ 260.41 Appeal inspection certificate.

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the processed product involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the processed product described therein. The inspector or inspectors issuing an appeal inspection certificate shall forward notice of such issuance to such persons as he considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector or inspectors issuing the appeal inspection certificate. The provisions in the regulations in this part concerning forms of certificates, issuance of certificates, and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished all interested parties who received copies of the superseded certificate.

LICENSING OF SAMPLERS ANDinspectors

§ 260.47 Who may become licensed sampler.

Any person deemed to have the necessary qualifications may be licensed as a licensed sampler to draw samples for the purpose of inspection under the regulations in this part. Such a license shall bear the printed signature of the Secretary and shall be countersigned by an authorized employee of the Department. Licensed samplers shall have no authority to inspect processed products under the regulations in this part except as to identification and condition of the containers in a lot. A licensed sampler shall perform his duties pursuant to the regulations in this part as directed by the Director.

§ 260.48 Application to become a licensed sampler.

Application to become a licensed sampler shall be made to the Secretary on forms furnished for that purpose. Each such application shall be signed by the applicant in his own handwriting, and the information contained therein shall be certified by him to be true, complete, and correct to the best of his knowledge and belief, and the application shall contain or be accompanied by:

(a) A statement showing his present and previous occupations, together with names of all employers for whom he has worked, with periods of service, during the 10 years previous to the date of his application;

(b) A statement that, in his capacity as a licensed sampler, he will not draw samples from any lot of processed products with respect to which he or his employer is an interested party;

(c) A statement that he agrees to comply with all terms and conditions of the regulations in this part relating to duties of licensed samplers; and

(d) Such other information as may be requested.

§ 260.49 Inspectors.

Inspections will ordinarily be performed by employees under the Secretary who are employed as Federal Government employees for that purpose. However, any person employed under any joint Federal-State inspection service arrangement may be licensed, if otherwise qualified, by the Secretary to make inspections in accordance with this part on such processed products as may be specified in his license. Such license shall be issued only in a case where the Secretary is satisfied that the particular person is qualified to perform adequately the inspection service for which such person is to be licensed. Each such license shall bear the printed signature of the Secretary and shall be countersigned by an authorized employee of the Department. An inspector shall perform his duties pursuant to the regulations in this part as directed by the Director.
§ 260.50 Suspension or revocation of license of licensed sampler or licensed inspector.

Pending final action by the Secretary, the Director may, whenever he deems such action necessary, suspend the license of any licensed sampler, or licensed inspector, issued pursuant to the regulations in this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons by such licensee, he may file an appeal, in writing, with the Secretary supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. After the expiration of the aforesaid 7 day period and consideration of such argument and evidence, the Secretary shall take such action as he deems appropriate with respect to such suspension or revocation.

§ 260.51 Surrender of license.

Upon termination of his services as a licensed sampler or licensed inspector, or suspension or revocation of his license, such licensee shall surrender his license immediately to the office of inspection serving the area in which he is located. These same provisions shall apply in a case of an expired license.

SAMPLING

§ 260.57 How samples are drawn by inspectors or licensed samplers.

An inspector or a licensed sampler shall select samples, upon request, from designated lots of processed products which are so placed as to permit thorough and proper sampling in accordance with the regulations in this part. Such person shall, unless otherwise directed by the Secretary, select sample units of such products at random, and from various locations in each lot in such manner and number, not inconsistent with the regulations in this part, as to secure a representative sample of the lot. Samples drawn for inspection shall be furnished by the applicant at no cost to the Department.

§ 260.58 Accessibility for sampling.

Each applicant shall cause the processed products for which inspection is requested to be made accessible for proper sampling. Failure to make any lot accessible for proper sampling shall be sufficient cause for postponing inspection service until such time as such lot is made accessible for proper sampling.

§ 260.59 How officially drawn samples are to be identified.

Officially drawn samples shall be marked by the inspector or licensed sampler so such samples can be properly identified for inspection.

§ 260.60 How samples are to be shipped.

Unless otherwise directed by the Secretary, samples which are to be shipped to any office of inspection shall be forwarded to the office of inspection serving the area in which the processed products from which the samples were drawn is located. Such samples shall be shipped in a manner to avoid, if possible, any material change in the quality or condition of the sample of the processed product. All transportation charges in connection with such shipments of samples shall be at the expense of the applicant and wherever practicable, such charges shall be prepaid by him.

§ 260.61 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with in-plant inspection and unless otherwise approved by the Secretary, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable single sampling plan or, at the discretion of the inspection service, any comparable multiple sampling plan: Provided, That at the discretion of the inspection service the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the single sampling plans with respect to any specified require-ment:
(1) If the number of deviants (as defined in connection with the specific requirements) in the sample does not exceed the acceptance number prescribed for the sample size the lot meets the requirement.

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size the lot fails the requirement.

(c) Under the multiple sampling plans inspection commences with the smallest sample size indicated under the appropriate plan and with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered does not exceed the acceptance number prescribed for that sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered equals or exceeds the rejection number prescribed for that sample size the lot fails the requirement;

(3) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered falls between the acceptance and rejection numbers of the plan, additional sample units are added to the sample so that the sample thus cumulated equals the next larger cumulative sample size in the plan. It may then be determined that the lot meets or fails the specific requirement by considering the cumulative sample and applying the procedures outlined in paragraphs (c)(1) and (2) of this section or by considering successively larger samples cumulated in the same manner until the lot meets or fails the specific requirement.

(d) If in the conduct of any type of in-plant inspection the sample is examined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot but does not equal any of the prescribed larger sample sizes the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size the lot meets the requirements;

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size additional sample units shall be selected to increase the sample to the next larger prescribed sample size;

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample exceeds the acceptance number prescribed for the next larger sample size the lot fails the requirement.

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word “deviation” for the word “deviant” wherever it appears.

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, V, and VI which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container size and amount of product to be samples.
### SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS

**TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE**

<table>
<thead>
<tr>
<th>Container size group</th>
<th>Lot size (number of containers)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GROUP 1</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container of less volume than that of a No. 300 size can (300×407)</td>
<td>3,600 or less 3,601–14,400 14,401–48,000 48,001–96,000 96,001–156,000 156,001–228,000 228,001–300,000 300,001–420,000 Over 420,000</td>
</tr>
<tr>
<td><strong>GROUP 2</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container of a volume equal to or exceeding that of a No. 300 size can, but not exceeding that of a No. 3 cylinder size can (404×700)</td>
<td>2,400 or less 2,401–12,000 12,001–24,000 24,001–48,000 48,001–72,000 72,001–108,000 108,001–168,000 168,001–240,000 Over 240,000</td>
</tr>
<tr>
<td><strong>GROUP 3</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container of a volume exceeding that of a No. 3 cylinder size can, but not exceeding that of a No. 12 size can (603×812)</td>
<td>1,200 or less 1,201–7,200 7,201–15,000 15,001–24,000 24,001–36,000 36,001–60,000 60,001–84,000 84,001–120,000 Over 120,000</td>
</tr>
<tr>
<td><strong>GROUP 4</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container of a volume exceeding that of a No. 12 size can, but not exceeding that of a 5-gallon container</td>
<td>200 or less 201–800 801–1,600 1,601–2,400 2,401–3,600 3,601–8,000 8,001–16,000 16,001–28,000 Over 28,000</td>
</tr>
<tr>
<td><strong>GROUP 5</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container of a volume exceeding that of a 5-gallon container</td>
<td>25 or less 26–80 81–200 201–400 401–800 801–1,200 1,201–2,000 2,001–3,200 Over 3,200</td>
</tr>
</tbody>
</table>

1. [SINGLE SAMPLING PLANS](#)
Sample size (number of sample units) 2 .......... 3 6 13 21 29 38 48 60 72
Acceptance number .... 0 1 2 3 4 5 6 6 7

1 For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

2 The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

**TABLE II—FROZEN OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE**

<table>
<thead>
<tr>
<th>Container size group</th>
<th>Lot size (number of containers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GROUP 1</td>
<td></td>
</tr>
<tr>
<td>Any type of container of 1 pound or less net weight ...............</td>
<td>2,400 or less 2,401–12,000 12,001–24,000 24,001–48,000 48,001–72,000 72,001–108,000 108,001–168,000 168,001–240,000 Over 240,000</td>
</tr>
<tr>
<td>GROUP 2</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 1 pound but not over 4 pounds net weight ...............</td>
<td>1,800 or less 1,801–8,400 8,401–18,000 18,001–36,000 36,001–60,000 60,001–96,000 96,001–132,000 132,001–168,000 Over 168,000</td>
</tr>
<tr>
<td>GROUP 3</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 4 pounds but not over 10 pounds net weight ...............</td>
<td>900 or less 901–3,600 3,601–10,800 10,801–18,000 18,001–36,000 36,001–60,000 60,001–84,000 84,001–120,000 Over 120,000</td>
</tr>
<tr>
<td>GROUP 4</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 10 pounds but not over 100 pounds net weight ...............</td>
<td>200 or less 201–800 801–1,600 1,601–2,400 2,401–3,600 3,601–8,000 8,001–16,000 16,001–28,000 Over 28,000</td>
</tr>
<tr>
<td>GROUP 5</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 100 pounds net weight ...............</td>
<td>25 or less 26–80 81–200 201–400 401–800 801–1,200 1,201–2,000 2,001–3,200 Over 3,200</td>
</tr>
</tbody>
</table>

Single sampling plans 1

| Sample size (number of sample units) 2 .......... 3 6 13 21 29 38 48 60 72 |
| Acceptance number .... 0 1 2 3 4 5 6 6 7 8 |

1 For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.
The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

**TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMUNICATED, FLUID, OR HOMOGENEOUS STATE**

<table>
<thead>
<tr>
<th>Container size group ¹</th>
<th>Lot size (number of containers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GROUP 1</td>
<td></td>
</tr>
<tr>
<td>Any type of container of 12 ounces or less</td>
<td>5,400 or less 5,401–21,600 21,601–62,400 62,401–112,000 112,001–174,000 174,001–240,000 240,001–360,000 360,001–480,000 Over 480,000</td>
</tr>
<tr>
<td>Any type of container over 12 ounces but not over 60 ounces</td>
<td>3,600 or less 3,601–14,400 14,401–48,000 48,001–96,000 96,001–156,000 156,001–228,000 228,001–300,000 300,001–420,000 Over 420,000</td>
</tr>
<tr>
<td>GROUP 3</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 60 ounces but not over 160 ounces</td>
<td>1,800 or less 1,801–6,400 8,401–18,000 18,001–60,000 36,001–60,000 60,001–96,000 96,001–132,000 132,001–168,000 Over 168,000</td>
</tr>
<tr>
<td>Any type of container over 160 ounces but not over 10 gallons or 100 pounds whichever is applicable</td>
<td>200 or less 201–800 801–1,600 1,601–3,200 3,201–8,000 8,001–16,000 16,001–24,000 24,001–32,000 Over 32,000</td>
</tr>
<tr>
<td>GROUP 4</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 10 gallons or 100 pounds whichever is applicable</td>
<td>25 or less 26–60 81–200 201–400 401–800 801–1,200 1,201–2,000 2,001–3,200 Over 3,200</td>
</tr>
</tbody>
</table>

**Single sampling plans ²**

<table>
<thead>
<tr>
<th>Sample size (number of sample units)</th>
<th>3</th>
<th>6</th>
<th>13</th>
<th>21</th>
<th>29</th>
<th>38</th>
<th>48</th>
<th>60</th>
<th>72</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptance number</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
</tr>
</tbody>
</table>

¹ Ounces pertain to fluid ounces of volume or avoirdupois ounces of net weight whichever is applicable for the product involved.

² For extension of the single sample sizes beyond 72 sample units, refer to Table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to Table VI of this section.

³ The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector’s discretion. Groups 4, 5, and 6—approximately 16 ounces of product. When determined by the inspector that a 16-ounce sample unit is inadequate, a larger sample unit may be substituted.
### TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS

<table>
<thead>
<tr>
<th>Container size group</th>
<th>Lot size (number of containers)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GROUP 1</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container of 1 pound or less net weight</td>
<td>1,800 or less 1,801–8,400 8,401–18,000 18,001–36,000 36,001–60,000 60,001–96,000 96,001–132,000 132,001–168,000 Over 168,000</td>
</tr>
<tr>
<td><strong>GROUP 2</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container over 1 pound but not over 6 pounds net weight</td>
<td>900 or less 901–3,600 3,601–10,800 10,801–18,000 18,001–36,000 36,001–60,000 60,001–84,000 84,001–120,000 Over 120,000</td>
</tr>
<tr>
<td><strong>GROUP 3</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container over 6 pounds but not over 20 pounds net weight</td>
<td>200 or less 201–800 801–1,600 1,601–3,200 3,201–8,000 8,001–16,000 16,001–24,000 24,001–32,000 Over 32,000</td>
</tr>
<tr>
<td><strong>GROUP 4</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container over 20 pounds but not over 100 pounds net weight</td>
<td>48 or less 49–400 401–1,200 1,201–2,000 2,001–2,800 2,801–6,000 6,001–9,600 9,601–15,000 Over 15,000</td>
</tr>
<tr>
<td><strong>GROUP 5</strong></td>
<td></td>
</tr>
<tr>
<td>Any type of container over 100 pounds net weight</td>
<td>16 or less 17–80 81–200 201–400 401–800 801–1,200 1,201–2,000 2,001–3,200 Over 3,200</td>
</tr>
</tbody>
</table>

**Single sampling plans**

<table>
<thead>
<tr>
<th>Sample size (number of sample units)²</th>
<th>3</th>
<th>4</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
<th>15</th>
<th>21</th>
<th>29</th>
<th>38</th>
<th>48</th>
<th>60</th>
<th>72</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptance number</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

²The sample units for the various container size groups are as follows: Group 1—1 container and its entire contents. Groups 2, 3, 4, and 5—1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.
### Multiple Sampling Plans 1

**Table VI—Multiple Sampling Plans Comparable to the Indicated Single Sampling Plans**

<table>
<thead>
<tr>
<th>Indicated single sampling plan:</th>
<th>6</th>
<th>13</th>
<th>21</th>
<th>29</th>
<th>38</th>
<th>48</th>
<th>60</th>
<th>72</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single sample size, ( n )</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acceptance numbers, ( c )</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cumulative sample sizes, ( n_c ) and acceptance numbers, ( c ), for multiple sampling.</th>
</tr>
</thead>
<tbody>
<tr>
<td>( n_1 )</td>
</tr>
<tr>
<td>( c )</td>
</tr>
</tbody>
</table>

1 These multiple sampling plans may be used in lieu of the single sampling plans listed at the heading of each column.
§ 260.62 Issuance of certificate of sampling.

Each inspector and each licensed sampler shall prepare and sign a certificate of sampling to cover the samples drawn by the respective person, except that an inspector who inspects the samples which he has drawn need not prepare a certificate of sampling. One copy of each certificate of sampling prepared shall be retained by the inspector or licensed sampler (as the case may be) and the original and all other copies thereof shall be disposed of in accordance with the instructions of the Secretary.

§ 260.63 Identification of lots sampled.

Each lot from which officially drawn samples are selected shall be marked in such manner as may be prescribed by the Secretary, if such lots do not otherwise possess suitable identification.

FEES AND CHARGES

§ 260.69 Payment fees and charges.

Fees and charges for any inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of the regulations in this part, and, if so required by the person in charge of the office of inspection serving the area where the services are to be performed, an advance of funds prior to rendering inspection service in an amount suitable to the Secretary, may be required as a guarantee of payment for the services rendered. All fees and charges for any inspection service, performed pursuant to the regulations in this part shall be paid by check, draft, or money order made payable to the National Marine Fisheries Service. Such check, draft, or money order shall be remitted to the appropriate regional or area office serving the geographical area in which the services are performed, within ten (10) days from the date of billing, unless otherwise specified in a contract between the applicant and the Secretary, in which latter event the contract provisions shall apply.

[36 FR 21038, Nov. 3, 1971]

§ 260.70 Schedule of fees.

(a) Unless otherwise provided in a written agreement between the applicant and the Secretary, the fees to be charged and collected for any inspection service performed under the regulations in this part at the request of the United States, or any other agency or instrumentality thereof, will be published as a notice in the FEDERAL REGISTER and will be in accordance with §260.81.

(b) Fees are reviewed annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered.

(1) The TYPE I (Contract Inspection) hourly fee is determined by dividing the estimated annual costs by the estimated annual billable hours.

(2) The TYPE II (Lot Inspection) hourly fee is determined by adding a factor of 50 percent to the TYPE I fee, to cover additional costs (down-time, etc.) associated with conducting lot inspection services.

(3) The TYPE III (Miscellaneous and Consulting) hourly fee is determined by adding a factor of 25 percent to the TYPE I fee, to cover the additional costs (down-time, etc.) associated with conducting miscellaneous inspection services.

[48 FR 24901, June 3, 1983]

§ 260.71 [Reserved]

§ 260.72 Fees for inspection service performed under cooperative agreement.

The fees to be charged and collected for any inspection or similar service performed under cooperative agreement shall be those provided for by such agreement.

§ 260.73 Disposition of fees for inspections made under cooperative agreement.

Fees for inspection under a cooperative agreement with any State or person shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted in accordance with §260.69.
§ 260.74 Fee for appeal inspection.

The fee to be charged for an appeal inspection shall be at the rates prescribed in this part for other inspection services: Provided, That, if the result of any appeal inspection made for any applicant, other than the United States or any agency or instrumentality thereof, discloses that a material error was made in the inspection on which the appeal is made, no inspection fee shall be assessed.

§ 260.76 [Reserved]

§ 260.77 Fees for score sheets.

If the applicant for inspection service requests score sheets showing in detail the inspection of each container or sample inspected and listed thereon, such score sheets may be furnished by the inspector in charge of the office of inspection serving the area where the inspection was performed; and such applicant shall be charged at the rate of $2.75 for each 12 sampled units, or fraction thereof, inspected and listed on such score sheets.

§ 260.78 Fees for additional copies of inspection certificates.

Additional copies of any inspection certificate other than those provided for in §260.29, may be supplied to any interested party upon payment of a fee of $2.75 for each set of five (5) or fewer copies.

§ 260.79 Travel and other expenses.

Charges may be made to cover the cost of travel and other expenses incurred in connection with the performance of any inspection service, including appeal inspections: Provided, That, if charges for sampling or inspection are based on an hourly rate, an additional hourly charge may be made for travel time including time spent waiting for transportation as well as time spent traveling, but not to exceed 8 hours of travel time for any one person for any one day: And provided further, That, if travel is by common carrier, no hourly charge may be made for travel time outside the employee’s official work hours.

§ 260.80 Charges for inspection service on a contract basis.

Irrespective of fees and charges prescribed in the foregoing sections, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as revised (16 U.S.C. 661 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the National Marine Fisheries Service of the Department for the full cost of rendering such inspection service as may be determined by the Secretary. Likewise, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with the administration of a similar program operated pursuant to the laws of any State.

[36 FR 21038, Nov. 3, 1971]

§ 260.81 Readjustment and increase in hourly rates of fees.

(a) When Federal Pay Act increases occur, the hourly rates for inspection fees will automatically be increased on the effective date of the pay act by an amount equal to the increase received by the average GS grade level of fishery product inspectors receiving such pay increases.

(b) The hourly rates of fees to be charged for inspection services will be subject to review and reevaluation for possible readjustment not less than every 3 years: Provided, That, the hourly rates of fees to be charged for inspection services will be immediately reevaluated as to need for readjustment with each Federal Pay Act increase.

[35 FR 15925, Oct. 9, 1970]

MISCELLANEOUS

§ 260.84 Policies and procedures.

The policies and procedures pertaining to any of the inspection services are contained within the NMFS Fishery Products Inspection Manual.
§ 260.86 Approved identification.

(a) Grade marks: The approved grade mark or identification may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such grade, quality or classification.

The grade marks approved for use shall be similar in form and design to the examples of Figures 1 to 5 of this section.

Shield using red, white, and blue background or other colors appropriate for label.

(b) Inspection marks: The approved inspection marks may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by

[Diagram of approved grade marks and inspection marks with figures 1 to 5 shown]
§ 260.86

an inspector as meeting the require-
ments of such quality or grade classi-

fication as may be approved by the
Secretary.
The inspection marks approved for use
shall be similar in form and design to
the examples in Figures 6, 7, and 8 of
this section.

Statement enclosed within a circle.

DIAGRAM

PACKED UNDER
FEDERAL
INSPECTION

UNITED STATES OF AMERICA

FIGURE 6.

Statement without the use of the
circle.

PACKED UNDER
FEDERAL
INSPECTION
U.S. DEPARTMENT
OF COMMERCE

FIGURE 7.

Statement without the use of the
circle.

PACKED BY

----------------------------------------

UNDER FEDERAL INSPECTION
U.S. DEPT. OF COMMERCE

FIGURE 8.

(c) Combined grade and inspection
marks: The grade marks set forth in
paragraph (a) of this section, and the
inspection marks, Figures 7 and 8, set
forth in paragraph (b) of this section,
may be combined into a consolidated
grade and inspection mark for use on
processed products that have been
packed under inspection as provided in
this part.

(d) Products not eligible for approved
identification: Processed products which
have not been packed under inspection
as provided in this part shall not be
identified by approved grade or inspec-
tion marks, but such products may be
inspected on a lot inspection basis as
provided in this part and identified by
an authorized representative of the De-
partment by stamping the shipping
cases and inspection certificate(s) cov-
ering such lot(s) as appropriate, with
marks similar in form and design to
the examples in Figures 9 and 10 of this
section.

OFFICIALLY SAMPLED

OCT. 3, 1970

U.S. DEPARTMENT
OF COMMERCE

FIGURE 9.
Removal of labels bearing inspection marks: At the time a lot of fishery products is found to be mislabeled and the labels on the packages are not removed within ten (10) consecutive calendar days, the following procedure shall be applicable:

1. The processor, under the supervision of the inspector, shall clearly and conspicuously mark all master cases in the lot by means of a "rejected by USDC Inspector" stamp provided by the Department.

2. The processor shall be held accountable to the Department for all mislabeled products until the products are properly labeled.

3. Clearance for the release of the relabeled products shall be obtained by the processor from the inspector.

Users of inspection services having an inventory of labels which bear official approved identification marks stating "U.S. Department of the Interior" or otherwise referencing the Interior Department, will be permitted to use such marks until December 31, 1971, except that upon written request the Director, National Marine Fisheries Service, may extend such period for the use of specific labels.

[36 FR 4609, Mar. 10, 1971]
§260.93

(3) Using on a processed product any label which displays the words “Packed Under Federal Inspection, U.S. Department of Commerce”, or which displays any official mark, official device, or official identification, or which displays a facsimile of the foregoing, when such product has not been inspected under the regulations of this subchapter.

(4) Making any statement or reference to the U.S. Grade of any processed product or any inspection service provided under the regulations of this subchapter on the label or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(5) Making, using, issuing or attempting to issue or use in conjunction with the sale, shipment, transfer or advertisement of a processed product any certificate of loading, certificate of sampling, inspection certificate, official device, official identification, official mark, official document, or score sheet which has not been issued, approved, or authorized for use with such product by an inspector.

(6) Using any of the terms “United States”, “Officially graded”, “Officially inspected”, “Government inspected”, “Federally inspected”, “Officially sampled”, or words of similar import or meanings, or using any official device, official identification, or official mark on the label, on the shipping container, or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(7) Using, attempting to use, altering or reproducing any certificate, certificate form, design, insignia, mark, shield, device, or figure which simulates in whole or in part any official mark, official device, official identification, certificate of loading, certificate of sampling, inspection certificate or other official certificate issued pursuant to the regulations of this subchapter.

(8) Assaulting, harassing, interfering, obstructing or attempting to interfere or obstruct any inspector or sampler in the performance of his duties under the regulations of this subchapter.

(9) Violating any one or more of the terms of any inspection contract or the provisions of the regulations of this subchapter.

(10) Engaging in acts or activities which destroy or interfere with the purposes of the inspection program or which have the effect of undermining the integrity of the inspection program.

(b) Temporary suspension. (1) Whenever the Director has reasonable cause to believe that any person has engaged in any act or activity described in paragraph (a) of this section, and in such act or activity, in the judgment of the Director, would cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter, the Director may, without a hearing, temporarily suspend, either before or after the institution of a debarment hearing, the inspection service provided under the regulations of this subchapter or under any inspection contract for one or more plants under the control of such person. Notice of suspension shall be served by registered or certified mail, return receipt requested, and the notice shall specifically state those acts or activities of such person which are the bases for the suspension. The suspension shall become effective five days after receipt of the notice.

(2) Once a person has received a notice of a temporary suspension, a debarment hearing will be set for 30 days after the effective date of the suspension. Within 60 days after the completion of the debarment hearing, the Hearing Examiner shall determine, based upon evidence of record, whether the temporary suspension shall be continued or terminated. A temporary suspension shall be terminated by the Hearing Examiner if he determines that the acts or activities, which were the bases for the suspension, did not occur or will not cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter. This determination of the Hearing Examiner on the continuation or termination of the temporary suspension shall be final and there shall be no appeal of this determination. The initial decision by the Hearing Examiner on the debarment shall be made in accordance with
paragraph (b)(1), Decisions, of this section.

(3) After a debarment hearing has been instituted against any person by a suspension, such suspension will remain in effect until a final decision is rendered on the debarment in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(4) When a debarment hearing has been instituted against any person not under suspension, the Director may, in accordance with the regulations of this paragraph (b) temporarily suspend such person, and the suspension will remain in effect until a final decision on the debarment is rendered in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(c) Hearing Examiner. All hearing shall be held before a Hearing Examiner appointed by the Secretary or the Director.

(d) Hearing. If one or more of the acts or activities described in paragraph (a) of this section have occurred, the Director may institute a hearing to determine the length of time during which the person shall be debarred and those plants to which the debarment shall apply. No person may be debarred unless there is a hearing, as prescribed in this section, and it has been determined by the Hearing Examiner, based on evidence of record, that the one or more of the activities described in paragraph (a) of this section have occurred. Any debarment or suspension must be instituted within two (2) years of the time when such acts or activities described in paragraph (a) of this section have occurred.

(e) Notice of hearing. The Director shall notify such person of the debarment hearing by registered or certified mail, return receipt requested. The notice shall set forth the time and place of the hearing, the specific acts or activities which are the basis for the debarment hearing, the time period of debarment being sought, and those plants to which the debarment shall apply. Except for the debarment hearing provided for in paragraph (b) of this section the hearing will be set for a time not longer than 120 days after receipt of the notice of hearing.

(f) Time and place of hearing. The hearing shall be held at a time and place fixed by the Director: Provided, however, The Hearing Examiner may, upon a proper showing of inconvenience, change the time and place of the hearing. Motions for change of time or place of the hearing must be mailed to or served upon the Hearing Examiner no later than 10 days before the hearing.

(g) Right to counsel. In all proceedings under this section, all persons and the Department of Commerce shall have the right to be represented by counsel, in accordance with the rules and regulations set forth in title 43, Code of Federal Regulations, part 1.

(h) Form, execution, and service of documents. (1) All papers to be filed under the regulations in this section shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding, if any, and the address of the signatory. Five copies of all papers are required to be filed. Documents filed shall be executed by:

(i) The person or persons filing same,

(ii) by an authorized officer thereof if it be a corporation or,

(iii) by an attorney or other person having authority with respect thereto.

(2) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(3) A person is deemed to have appeared in a hearing by the filing with the Director a written notice of his appearance or his authority in writing to appear on behalf of one of the persons to the hearing.

(4) The original of every document filed under this section and required to
be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.

Dated at __________ this ______ day of ______, 19__

Signature __________

1) Procedures and evidence. (1) All parties to a hearing shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearing Examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary.

2) Duties of Hearing Examiner. The Hearing Examiner shall have the authority and duty to:

(1) Take or cause depositions to be taken.

(2) Regulate the course of the hearings.

(3) Prescribe the order in which evidence shall be presented.

(4) Dispose of procedural requests or similar matters.

(5) Hear and initially rule upon all motions and petitions before him.

(6) Administer oaths and affirmations.

(7) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.

(8) Control the admission of irrelevant, immaterial, incompetent, unreliable, repetitious, or cumulative evidence.

(9) Hear oral arguments if the Hearing Examiner determined such requirement is necessary.

(10) Fix the time for filing briefs, motions, and other documents to be filed in connection with hearings.

(11) Issue the initial decision and dispose of any other pertinent matters that normally and properly arise in the course of proceedings.

(12) Do all other things necessary for an orderly and impartial hearing.

3) The record. (1) The Director will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director. Transcripts of testimony will be available in any proceeding under the regulations of this section, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of Commerce, the rate will be fixed by the Director.

(2) The transcript of testimony and exhibits, together with all briefs, papers, and all rulings by the Hearing Examiner shall constitute the record. The initial decision will be predicated on the same record, as will be final decision.

4) Decisions. (1) The Hearing Examiner shall render the initial decision in all debarment proceedings before him. The same Hearing Examiner who presides at the hearing shall render the initial decision except when such Examiner becomes unavailable to the Department of Commerce. In such case, another Hearing Examiner will be designated by the Secretary or Director to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than twenty (20) days after the hearing, unless otherwise extended by the Hearing Examiner upon motion by a party. The initial decision shall be made within sixty (60) days after the receipt of all briefs. If no appeals from the initial decision is served upon the Director within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(2) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or bases therefore, upon the material
issues presented. A copy of each decision shall be served on the parties to the proceeding, and furnished to interested persons upon request.

(3) It shall be the duty of the Hearing Examiner, and the Secretary where there is an appeal, to determine whether the person has engaged in one or more of the acts or activities described in paragraph (a) of this section, and, if there is a finding that the person has engaged in such acts or activities, the length of time the person shall be debarred, and the plants to which the debarment shall apply.


§260.97 Conditions for providing fishery products inspection service at official establishments.

(a) The determination as to the inspection effort required to adequately provide inspection service at any establishment will be made by NMFS. The man-hours required may vary at different official establishments due to factors such as, but not limited to, size and complexity of operations, volume and variety of products produced, and adequacy of control systems and cooperation. The inspection effort requirement may be reevaluated when the contracting party or NMFS deems there is sufficient change in production, equipment and change of quality control input to warrant reevaluation. Inspectors will not be available to perform any of employee or management duties, however, they will be available for consultation purposes. NMFS reserves the right to reassign inspectors as it deems necessary.

(b) NMFS shall not be held responsible:

(1) For damages occurring through any act of commission or omission on the part of its inspectors when engaged in performing services; or

(2) For production errors, such as processing temperatures, length of process, or misbranding of products; or

(3) For failure to supply enough inspection effort during any period of service.

(c) The contracting party will:

(1) Use only wholesome raw material which has been handled or stored under sanitary conditions and is suitable for processings; maintain the official establishment(s), designated on the contract in such sanitary condition and to employ such methods of handling raw

1 Compliance with the above requirements does not excuse failure to comply with all applicable sanitary rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such establishments and operations.
§ 260.97

materials for processing as may be necessary to conform to the sanitary requirements prescribed or approved by NMFS;

(2) Adequately code each primary container and master case of products sold or otherwise distributed from a manufacturing, processing, packing, or repackaging activity to enable positive lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use;

(3) Not permit any labels on which reference is made to Federal inspection, to be used on any product which is not packed under fishery products inspection service nor permit any labels on which reference is made to any U.S. Grade to be used on any product which has not been officially certified as meeting the requirements of such grade; nor supply labels bearing reference to Federal inspection to another establishment unless the products to which such labels are to be applied have been packed under Federal inspection at an official establishment;

(4) Not affix any label on which reference is made to Federal inspection to any container of processed foods, produced in any designated official establishment, with respect to which the grade of such product is not certified because of adulteration due to the presence of contaminants in excess of limits established in accordance with the regulations or guidelines issued pursuant to the Food, Drug, and Cosmetic Act, as amended;

(5) Not, with respect to any product for which U.S. Grade Standards are in effect, affix any label on which reference is made to Federal inspection to any container of processed food which is substandard: Provided, That such label may be affixed to any container of such substandard quality product if such label bears a statement to indicate the substandard quality;

(6) Not, with respect to any product for which U.S. Grade Standard are not in effect, affix any label on which reference is made to the Federal inspection to containers of processed foods, except with the approval of NMFS;

(7) Furnish such reports of processing, packaging, grading, laboratory analyses, and output of products inspected, processed, and packaged at the designated official establishment(s) as may be requested by NMFS, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942;

(8) Make available for use by inspectors, adequate office space in the designated official establishment(s) and furnish suitable desks, office equipment, and files for the proper care and storage of inspection records;

(9) Make laboratory facilities and necessary equipment available for the use of inspectors to inspect samples of processed foods and/or components thereof;

(10) Furnish and provide laundry service, as required by NMFS, for coats, trousers, smocks, and towels used by inspectors during performance of duty in official establishment(s); (11) Furnish stenographic and clerical assistance as may be necessary in the typing of certificates and reports and the handling of official correspondence, as well as furnish the labor incident to the drawing and grading of samples and other work required to facilitate adequate inspection procedures whenever necessary;

(12) Submit to NMFS, three (3) copies of new product specifications in a manner prescribed by NMFS, and three (3) end-product samples for evaluation and/or laboratory analysis on all products for approval, for which U.S. Grade Standards are not available, when inspection is to be applied to such products. If requested of NMFS, such new specifications and end-product samples shall be considered confidential;

(13) Submit, as required by NMFS, for approval, proofs prior to printing and thereafter four (4) copies of any finished label which may or may not bear official identification marks, when such products are packed under Federal inspection on a contract basis;

(14) Not make deceptive, fraudulent, or unauthorized use in advertising, or otherwise, of the fishery products inspection service, the inspection certificates or reports issued, or the containers on which official identification marks are embossed or otherwise identified, in connection with the sale of any processed products;
(15) Submit to NMFS, four (4) copies of each label which may or may not bear official identification marks, when such labels are to be withdrawn from inspection or when approved labels are disapproved for further use under inspection;

(16) Notify NMFS in advance of the proposed use of any labels which require obliteration of any official identification marks, and all reference to the inspection service on approved labels which have been withdrawn or disapproved for use;

(17) Accord representatives of NMFS at all reasonable times free and immediate access to establishment(s) and official establishment(s) under applicant’s control for the purpose of checking codes, coded products, coding devices, coding procedures, official identification marks obliteration, and use of withdrawn or disapproved labels.

(d) Termination of inspection services:

(1) The fishery products inspection service, including the issuance of inspection reports, shall be rendered from the date of the commencement specified in the contract and continue until suspended or terminated:

(i) By mutual consent;

(ii) by either party giving the other party sixty (60) days’ written notice specifying the date of suspension or termination;

(iii) by one (1) day’s written notice by NMFS in the event the applicant fails to honor any invoice within ten (10) days after date of receipt of such invoice covering the full costs of the inspection service provided, or in the event the applicant fails to maintain its designated plants in a sanitary condition or to use wholesome raw materials for processing as required by NMFS, or in the event the applicant fails to comply with any provisions of the regulations contained in this part;

(iv) by automatic termination in case of bankruptcy, closing out of business, or change in controlling ownership.

(2) In case the contracting party wishes to terminate the fishery products inspection service under the terms of paragraph (d)(1)(i) or (ii) of this section, either the service must be continued until all unused containers, labels, and advertising material on hand in possession of his supplier bearing official identification marks, or reference to fishery products inspection service have been used, or said containers, labels, and advertising material must be destroyed, or official identification marks, and all other reference to the fishery products inspection service on said containers, labels, advertising material must be obliterated, or assurance satisfactory to NMFS must be furnished that such containers, labels, and advertising material will not be used in violation of any of the provisions of the regulations in the part.

(3) In case the fishery products inspection service is terminated for cause by NMFS under the terms of paragraph (d)(1)(iii) of this section, or in case of automatic termination under terms of paragraph (d)(1)(iv) of this section, the contracting party must destroy all unused containers, labels, and advertising material on hand bearing official identification marks, or reference to fishery products inspection service, or must obliterate official identification marks, and all reference to the fishery products inspection service on said containers, labels and advertising material.

After termination of the fishery products inspection service, NMFS may, at such time or times as it may determine to be necessary, during regular business hours, enter the establishment(s) or other facilities in order to ascertain that the containers, labels, and advertising material have been altered or disposed of in the manner provided herein, to the satisfaction of NMFS.

[36 FR 21039, Nov. 3, 1971]

§ 260.98 Premises.

The premises about an official establishment shall be free from conditions which may result in the contamination of food including, but not limited to, the following:

(a) Strong offensive odors;

(b) Improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(c) Excessively dusty roads, yards, or parking lots that may constitute a
source of contamination in areas where food is exposed;
(d) Inadequately drained areas that may contribute contamination to food products through seepage or foot-borne filth and by providing a breeding place for insects or micro-organisms;
If the grounds of an official establishment are bordered by grounds not under the official establishment operator’s control of the kind described in paragraphs (b) through (d) of this section, care must be exercised in the official establishment by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

The buildings and structures shall be properly constructed and maintained in a sanitary condition, including, but not limited to the following requirements:
(a) Lighting. There shall be sufficient light (1) consistent with the use to which the particular portion of the building is devoted, and (2) to provide for efficient cleaning. Belts and tables on which picking, sorting, or trimming operations are carried on shall be provided with sufficient non-glaring light to insure adequacy of the respective operation. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(b) Ventilation. There shall be sufficient ventilation in each room and compartment thereof to prevent excessive condensation of moisture and to insure sanitary and suitable processing and operating conditions. If such ventilation does not prevent excessive condensation, the Director may require that suitable facilities be provided to prevent the condensate from coming in contact with equipment used in processing operations and with any ingredient used in the manufacture or production of a processed product.
(c) Drains and gutters. All drains and gutters shall be properly installed with approved traps and vents. The drainage and plumbing system must permit the quick runoff of all water from official establishment buildings, and surface water around buildings and on the premises; and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard. Tanks or other equipment whose drains are connected to the waste system must have such screens and vacuum breaking devices affixed so as to prevent the entrance of waste water, material, and the entrance of vermin to the processing tanks or equipment.
(d) Water supply. There shall be ample supply of both hot and cold water; and the water shall be of safe and sanitary quality with adequate facilities for its (1) distribution throughout buildings, and (2) protection against contamination and pollution.

Sea water of safe suitable and sanitary quality may be used in the processing of various fishery products when approved by NMFS prior to use.
(e) Construction. Roofs shall be weathertight. The walls, ceilings, partitions, posts, doors, and other parts of all buildings and structures shall be of such materials, construction, and finish as to permit their efficient and thorough cleaning. The floors shall be constructed of tile, cement, or other equally impervious material, shall have good surface drainage, and shall be free from openings or rough surfaces which would interfere with maintaining the floors in a clean condition.

(f) Processing rooms. Each room and each compartment in which any processed products are handled, processed, or stored (1) shall be so designed and constructed as to insure processing and operating conditions of a clean and orderly character; (2) shall be free from objectional odors and vapors; and (3) shall be maintained in a clean and sanitary condition.
(g) Prevention of animals and insects in official establishment(s). Dogs, cats, birds, and other animals (including, but not being limited to rodents and insects) shall be excluded from the rooms from which processed products are being prepared, handled, or stored and from any rooms from which ingredients (including, but not being limited to salt, sugar, spices, flour, batter, breading, and fishery products) are handled and stored. Screens, or other
§ 260.102 Equipment.

All equipment used for receiving, washing, segregating, picking, processing, packaging, or storing any processed products or any ingredients used in the manufacture or production thereof, shall be of such design, material, and construction as will:

(a) Enable the examination, segregation, preparation, packaging, and other processing operations applicable to

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§260.103 Operations and operating procedures shall be in accordance with an effective sanitation program.

(a) All operators in the receiving, transporting, holdings, segregating, preparing, processing, packaging, and storing of processed products and ingredients, used as aforesaid, shall be strictly in accord with clean and sanitary methods and shall be conducted as rapidly as possible and at temperatures that will inhibit and retard the growth of bacterial and other micro-organisms and prevent any deterioration or contamination of such processed products or ingredients thereof. Mechanical adjustments or practices which may cause contamination of foods by oil, dust, paint, scale, fumes, grinding materials, decomposed food, filth, chemicals, or other foreign materials shall not be conducted during any manufacturing or processing operation.

(b) All processed products, raw materials, ingredients, and components thereof shall be subject to inspection during each manufacturing or processing operation. To assure a safe, wholesome finished product, changes in processing methods and procedures as may be required by the Director shall be effectuated as soon as practicable. All processed products which are not manufactured or prepared in accordance with the requirements contained in §260.96 to §260.104 or are unwholesome or otherwise not fit for human food shall be removed and segregated prior to any further processing operation.

(c) Official establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations.

(d) All ingredients used in the manufacture or processing of any processed product shall be wholesome and fit for human food.

(e) The methods and procedures employed in the receiving, segregating, handling, transporting, and processing of ingredients in official establishment(s) shall be adequate to result in a satisfactory processed product. Such methods and procedures include, but are not limited to, the following requirements:

(1) Containers, utensils, pans, and buckets used for the storage or transporting of partially processed food ingredients shall not be nested unless re-washed and sanitized before each use;

(2) Containers which are used for holding partially processed food ingredients shall not be stacked in such manner as to permit contamination of the partially processed food ingredients;

(3) Packages or containers for processed products shall be clean when being filled with such products; and all reasonable precautions shall be taken to avoid soiling or contaminating the surface of any package or container liner which is, or will be, in direct contact with such products.

(f) Retention tags: (1) Any equipment such as, but not limited to, conveyors, tillers, sorters, choppers, and containers which fail to meet appropriate and adequate sanitation requirements will be identified by the inspector in an appropriate and conspicuous manner with the word “RETAINED.” Following such identification, the equipment shall not be used until the discrepancy has been resolved, the equipment reinspected and approved by the inspector and the “RETAINED” identification removed by the inspector.

(2) Lot(s) of processed products that may be considered to be mislabeled and/or unwholesome by reason of contaminants or which may otherwise be in such condition as to require further evaluation or testing to determine that
the product properly labeled and/or wholesome will be identified by the inspector in an appropriate and conspicuous manner with the word “RE-TAINED.” Such lot(s) of product shall be held for reinspection or testing. Final disposition of the lot(s) shall be determined by NMFS and the removal of the “RE-TAINED” identification shall be performed by the inspector.

[36 FR 21041, Nov. 3, 1971]

§ 260.104 Personnel.

The establishment management shall be responsible for taking all precautions to assure the following:

(a) Disease control. No person affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food ingredients becoming contaminated by such person, or of disease being transmitted by such person to other individuals.

(b) Cleanliness. All persons, while working in direct contact with food preparation, food ingredients, or surfaces coming into contact therewith shall:

1. Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty, to the extent necessary to prevent contamination of food products.

2. Wash and sanitize their hands thoroughly to prevent contamination by undesirable microorganisms before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

3. Remove all insecure jewelry and, when food is being manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

4. If gloves are used in food handling, maintain them in an intact, clean, and sanitary condition. Such gloves shall be of an impermeable material except where their usage would be inappropriate or incompatible with the work involved.

5. Wear hair nets, caps, masks, or other effective hair restraints. Other persons that may incidentally enter the processing areas shall comply with this requirement.

6. Not store clothing or other personal belongings, eat food, drink beverages, chew gum, or use tobacco in any form in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils.

7. Take any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) Education and training. Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean wholesome food. Food handlers and supervisors should receive appropriate training in proper food-handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and unsanitary practices, and other vectors of contamination.

[36 FR 21041, Nov. 3, 1971]

LABELING REQUIREMENTS

§§ 260.200–260.201 [Reserved]

PART 261—UNITED STATES STANDARDS FOR GRADES

Sec.

261.101 Standard description.

261.102 Publication and removal of U.S. Grade Standards.

261.103 Basis for determination of a U.S. Standard for Grades.


SOURCE: 61 FR 9369, Mar. 8, 1996, unless otherwise noted.

§ 261.101 Standard description.

A U.S. Standard for Grades authorized under this part is a standard for a fish or fishery product that has been developed and adopted by the voluntary seafood inspection program pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) and
§ 261.102 Publication and removal of U.S. Grade Standards.

(a) The voluntary U.S. Standards for Grades adopted pursuant to this part shall be issued as Program policies and contained within the NMFS Fishery Products Inspection Manual. Compliance with voluntary standards issued as Program policies within the manual shall satisfy the requirements of this part. Compliance with a voluntary standard issued as a Program policy does not relieve any party from the responsibility to comply with the provisions of the Federal Food, Drug, and Cosmetic Act; or other Federal laws and regulations.

(b) Notification of an application for a new grade standard shall be published in the FEDERAL REGISTER. If adopted, the grade standard shall be issued as a Program policy and contained in the NMFS Fishery Products Inspection Manual.

(c) Recision and revision of a U.S. Standard for Grades will be made a Program policy amendment and contained in the NMFS Fishery Products Inspection Manual.

(d) The NMFS Fishery Products Inspection Manual is available to interested parties.

§ 261.103 Basis for determination of a U.S. Standard for Grades.

(a) To address the inherently distinct and dissimilar attributes found in the fishery product groups, each standard for grades should have a different scope and product description, product forms, sample sizes, definition of defects, etc. The Secretary will make the final determination regarding the content of a U.S. Standard for Grades.

(b) A proposal for a new or revised U.S. grade standard may include the following:

(1) Scope and product description, which describes the products that are eligible for grading using the standard (e.g., fish portion, fish fillet).

(2) Product forms, which describe the types, styles and market forms covered by the standard (e.g., skin-off, tail-on, headless).

(3) Grade and inspection marks, which describe the grades and inspection mark criteria for each grade category (e.g., Grade A ≤ 15 points).

(4) Grade determination, which describes the means by which the grade is determined (i.e., the factors rated by score points and those that are not). Standards may contain defect grouping limiting rules that contain additional provisions that must be met.

(5) Sampling, which describes the method of sampling and sample unit sizes (e.g., 10 portions, 8 ounces, etc.).

(6) Procedures that describe the process used to determine the product grade (e.g., label declarations, sensory evaluation).

(7) Definitions of defects, which outline the defects associated with the products covered by the standard, define them, and describes the method of counting or measuring the defects. This section may provide associated defect points or reference a defect table (e.g., bruises, blood spots, bones, black spots, coating defects, 1-inch squares, percent by weight, ratios).

(8) Defect point assessment, which describes how to assess points and provides any special guidance that may be necessary to the particular standard (e.g., defect points for certain categories are added together and divided by the weight of the sample unit; the number of instances are counted to determine if it is slight, moderate, or excessive defect).

(9) Tolerances for lot certification, which provide the sections from Title 50 CFR that regulate lot certification.

(10) Hygiene, which specifies the sections of applicable Federal regulations regulating the safe, wholesome production of food for human consumption.

(11) Methods of analysis, which describe the methods of analysis that will be used in the evaluation of the products covered by the standard for grades (e.g., net weight, deglazing, debreading).

(12) Defect table, which is the table of defects and associated points to be assessed for each defect.
PART 296—FISHERMEN’S CONTINGENCY FUND

Sec. 296.1 Purpose.
296.2 Definitions.
296.3 Fishermen’s contingency fund.
296.4 Claims eligible for compensation.
296.5 Instructions for filing claims.
296.6 NMFS processing of claims.
296.7 Burden of proof and presumption of causation.
296.8 Amount of award.
296.9 Initial determination.
296.10 Agency review.
296.11 Final determination.
296.12 Payment of costs.
296.13 Payment of award for claim.
296.14 Subrogation.
296.15 Judicial review.

SOURCE: 47 FR 49600, Nov. 1, 1982, unless otherwise noted.

§ 296.1 Purpose.

These regulations implement title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (title IV). Title IV establishes a Fishermen’s Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.

Area affected by Outer Continental Shelf activities means the area within a 3-mile radius of any casualty site which:

(1) Includes any portion of a leased block, pipeline, easement, right of way, or other OCS oil and gas exploration, development, or production activity; or

(2) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

Chief, FSD means Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713–2396.

Citizen of the United States means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

Commercial fisherman means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

Commercial fishing vessel means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

Easement means a right of use or easement granted under 30 CFR 250.18.

Fish means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

Fishing gear means any commercial fishing vessel, and any equipment of such vessel.

Fund means the Fishermen’s Contingency Fund established by title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

Holder means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-way or any agent or assignee of an owner.

Lease means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

Negligence or fault includes, but is not limited to, failure to:

(1) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(2) Avoid obstructions recorded on nautical charts or in the Notice to Mariners or marked by a buoy or other surface marker (casualties occurring
§ 296.3 Fishermen's contingency fund.

(a) General. There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) Payments into the fund. Each Holder of an exploration permit, lease, easement, or rights-of-way for the construction of a pipeline, or a prelease exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assessments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(c) Moneys recovered through subrogation. Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) Investments of the fund. Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) Litigation. The Fund may sue and be sued in its own name.

§ 296.4 Claims eligible for compensation.

(a) Claimants. Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(b) Damage or loss of fishing gear. Damage or loss is eligible for Fund...
compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) Exceptions. Damage or loss is not eligible for Fund compensation:
   (1) If the damage or loss was caused by the negligence or fault of the claimant;
   (2) If the damage or loss occurred prior to September 18, 1978;
   (3) To the extent that damage or loss exceed the replacement value of the fishing gear involved;
   (4) For any portion of the damage or loss which can be compensated by insurance;
   (5) If the claim is not filed within 90 calendar days of the date the claimant or the claimant’s agent first became aware of the damage or loss; or
   (6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

§ 296.5 Instructions for filing claims.

(a) Fifteen-day report required to gain presumption of causation.—(1) General. Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) When and how to file a fifteen-day report. To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is made in person. The fifteen-day report must be made to the Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2396.

(3) Contents of fifteen-day report. Each fifteen-day report must include the following information:
   (i) The claimant’s name and address;
   (ii) The name of the commercial fishing vessel involved;
   (iii) The location of the obstruction which caused the damage or loss;
   (iv) A description of the nature of the damage or loss;
   (v) The date such damage or loss was discovered;
   (vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) Form of claim. Claims must be in writing. Claims may be submitted on NOAA form 88-164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) Who must file and when and where to file claims. All claimants (including those who filed 15-day reports to gain the presumption of causation) must submit a claim application to the Chief, Financial Services Division, within 90 calendar days of the date the claimant or the claimant’s agent first became aware of the damage or loss. The Chief, FSD, may allow a longer period for filing claims if, in his discretion, unusual and extenuating circumstances justify a longer period. The term “filed” means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, DC 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that
§ 296.6 NMFS processing of claims.

(a) Action by NMFS, Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered

the claim was received by the Chief, FSD.

(d) Aggregating claims. If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) Contents of claim. Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred.

(iii) The direction, speed, and activities of the claimant’s vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or lost and proof of its purchase (sales receipts, affidavits, or other evidence),

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units deployed on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

§ 296.7 Burden of proof and presumption of causation.

(a) Burden of proof. The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the OCS.

(b) Presumption of causation. Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant’s commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the United States judicial district in which the claimant’s home port is located.

(2) Powers. For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) Amendments to claims. A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) Criminal penalty for fraudulent claims. Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a $10,000 fine and 5 years’ imprisonment, or both.

§ 296.8 Amount of award.

(a) Actual damages. The award for damaged fishing gear will be the lesser of the gear’s repair cost or replacement cost. The award for lost fishing gear will be the gear’s replacement cost.

(b) Consequential damages. An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) Resulting economic loss. An award may also include 50 percent of the resulting economic loss from damage to or loss of fishing vessels and gear.

(d) Attorney, CPA, consultant fees. An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) Negligence of claimant. (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained $10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive $6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive $100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel’s owner or operator.

(f) Insurance proceeds. An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985]

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FSD, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD, issues an initial determination, the initial determination will become a final determination.
§ 296.12 Payment of costs.

(a) By person denying responsibility for damage. Any person who is notified by the Interior Department and fails to respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) By the claimant. Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) By person denying responsibility for damage and the claimant. If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, Financial Services Division, shall immediately disburse the claim awarded if the claimant signed as part of his/her application a statement agreeing to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) [Reserved]

[61 FR 6322, Feb. 20, 1996]

§ 296.14 Subrogation.

(a) The claim application will contain a subrogation statement signed by the claimant as a condition of payment of the claim which:

(1) Assigns to the Fund the claimant’s rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.


§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant’s home port is located.
CHAPTER III—INTERNATIONAL FISHING AND RELATED ACTIVITIES

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§ 300.1 Purpose and scope.

The purpose of this part is to implement the fishery conservation and management measures provided for in the international treaties, conventions, or agreements specified in each subpart, as well as certain provisions of the Lacey Act Amendments of 1981. The regulations in this part apply, except where otherwise specified in this part, to all persons and all places subject to the jurisdiction of the United States under the acts implemented under each subpart.

§ 300.2 Definitions.

In addition to the definitions in each act, agreement, convention, or treaty specified in subparts B through K of this part, the terms used in this part have the following meanings:

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or a designee. Address: Room 14555, 1315 East-West Highway, Silver Spring, MD 20910.

Authorized officer means:
(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;
(2) Any special agent or fisheries enforcement officer of NMFS; or
(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the U.S. Coast Guard to enforce the provisions of any statute administered by the Secretary.

CCAMLR inspector means a person designated by a member of the Commission for the Conservation of Antarctic Marine Living Resources as an inspector under Article XXIV of the Convention on the Conservation of Antarctic Marine Living Resources to verify compliance with measures in effect under the Convention.

Director, Alaska Region, means Director, Alaska Region, NMFS, 709 West Ninth Street, Suite 401, P.O. Box 21668, Juneau, AK 99802, or a designee.

Director, Northeast Region, means Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298, or a designee.

Director, Northwest Region, means Director, Northwest Region, NMFS, 7600 Sand Point Way, N.E., BIN C15700, Bldg. 1, Seattle, WA 98115, or a designee.

Director, Southeast Fisheries Science Center, means Director, Science and Research, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, or a designee.

Director, Southeast Region, means Director, Southeast Region, NMFS, 9721
Executive Center Drive, N., St. Petersburg, FL 33702, or a designee.

Director, Southwest Region, means Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Exclusive Economic Zone or EEZ means the zone established by Presidential Proclamation 5030, dated March 10, 1983, as defined in 16 U.S.C. 1802(6).

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

IATTC means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction, constitutes an importation within the meaning of the customs laws of the United States.

IRCS means International Radio Call Sign.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

National of the United States or U.S. national means any person subject to the jurisdiction of the United States, including, but not limited to, a citizen or resident of the United States, or a person employed on a vessel of the United States. In the case of a corporation, partnership or other non-natural person, this includes, but is not limited to, any entity that is the owner of a vessel of the United States.

NMFS means the National Marine Fisheries Service, NOAA, Department of Commerce.

NMFS Headquarters means NMFS, 1315 East–West Highway, Silver Spring, MD 20910. Attention: Office of Fisheries Conservation and Management.

Official number means the documentation number issued by the USCG or the certificate number issued by a state or the USCG for an undocumented vessel, or any equivalent number if the vessel is registered in a foreign nation.

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

Owner means, with respect to any vessel:

(1) Any person who owns that vessel in whole or part (whether or not the vessel is leased or chartered);

(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 this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such government.

Secretary means the Secretary of Commerce or a designee.

USCG means the United States Coast Guard.

Yellowfin tuna means any fish of the species *Thunnus albacares* (synonomy: *Neothunnus macropterus*).

§ 300.4 General prohibitions.

It is unlawful for any person subject to the jurisdiction of the United States to:
§ 300.5 Facilitation of enforcement.

(a) Compliance. The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer or CCAMLR inspector 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 this part.

(b) Communications. (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer or CCAMLR inspector aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF–FM radiotelephone is the preferred method of 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, voice, flags, whistle or horn may be employed by an authorized officer or CCAMLR inspector, 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” which, in the International Code of Signals, means “you should stop your vessel instantly.”

4) Failure of a vessel’s operator promptly to stop the vessel when directed to do so by an authorized officer or CCAMLR inspector, or by an enforcement vessel or aircraft, using loudhailer, radiotelephone, flashing light, flags, whistle, horn or other means constitutes prima facie evidence of the offense of refusal to allow an authorized officer or CCAMLR inspector to board.

5) A person aboard 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 immediately.

(c) Boarding. The operator of a vessel directed to stop must:

1) Monitor Channel 16, VHF–FM, if so equipped.

2) Stop immediately and lay to or, if appropriate and/or directed to do so by the authorized officer or CCAMLR inspector, maneuver in such a way as to allow the safe boarding of the vessel by the authorized officer or CCAMLR inspector and the boarding party.

3) Except for those vessels with a freeboard of 4 ft (1.25 m) or less, provide a safe ladder, if needed, for the authorized officer or CCAMLR inspector and boarding party to come aboard.

4) When necessary to facilitate the boarding or when requested by an authorized officer or CCAMLR inspector, 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 or CCAMLR inspector 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.

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 that may be in the water.

3) “SQ3” (. . . . . . . . . .) means “you should stop or heave to; I am going to board you.”

Subpart B—High Seas Fisheries

AUTHORITY: 16 U.S.C. 5501 et seq.

§ 300.10 Purpose.

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas.

§ 300.11 Definitions.

In addition to the terms defined in section 300.2 and those in the Act and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, the Act, or the Agreement, the definition in this section shall apply.
§ 300.12 Issuing offices.

Any Regional Administrator may issue permits required under this subpart. While applicants for permits may submit an application to any Regional Administrator, applicants are encouraged to submit their applications (with envelopes marked “Attn: HSFCA Permits”) to the Regional Administrator with whom they normally interact on fisheries matters.

§ 300.13 Vessel permits.

(a) Eligibility. (1) Any high seas fishing vessel of the United States is eligible to receive a permit under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and —

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1) (i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Administrator demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures has no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1) (i) and (ii) of this section do not apply if it is determined by the Regional Administrator that issuing a permit would not subvert the purposes of the Agreement.

(b) Application forms. The owner or operator of a high seas fishing vessel may apply for a permit under this subpart by completing an application form. Applicants may obtain an application form from a Regional Administrator.

(c) Application information. An applicant must submit a complete and accurate permit application, signed by the owner or operator, to the appropriate Regional Administrator.

(d) Fees. NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from a Regional Administrator, for determining administrative costs of each special product or service. The fee is specified with the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit.

(e) Issuance. (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit, which will include appropriate conditions or restrictions, within 30 days of receipt of a completed application and payment of the appropriate fee.
§ 300.14 Fishing and Related Activities

(2) The Regional Administrator will notify the applicant of any deficiency in the application.

(f) Validity. Permits issued under this subpart are valid for 5 years from the date of issuance. Renewal of a permit prior to its expiration is the responsibility of the permit holder. For a permit to remain valid to its expiration date, the vessel’s USCG documentation or state registration must be kept current. A permit issued under this subpart is void when the name of the owner or vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(g) Change in application information. Any changes in vessel documentation status or other permit application information must be reported to the Regional Administrator in writing within 15 days of such changes.

(h) Transfer. A permit issued under this subpart is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) Display. A valid permit, or a copy thereof, issued under this subpart must be on board the vessel while operating on the high seas and available for inspection by an authorized officer. Faxed copies of permits are acceptable.

§ 300.14 Vessel identification.

(a) General. A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) Marking. Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its IRCS, or, if not assigned an IRCS, must be marked (in order of priority) with its Federal, state, or other documentation number appearing on its high seas fishing permit;

(ii) The markings must be displayed at all times on the vessel’s side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: for vessels 26 meters (m) and over in length, the height of letters and numbers must be no less than 1.0 m; for vessels 20 m but less than 25 m in length, the height of letters and numbers must be no less than 0.8 m; for vessels 15 m but less than 20 m in length, the height of letters and numbers must be no less than 0.6 m; for vessels 12 m but less than 15 m in length, the height of letters and numbers must be no less than 0.4 m; for vessels 5 m but less than 12 m in length, the height of letters and numbers must be no less than 0.3 m; and for vessels under 5 m in length, the height of letters and numbers must be no less than 0.1 m;

(vi) The space between letters and numbers must be placed on decks must be no less than 0.3 m;

(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers, and hyphens must be h/6;

(ix) The space between letters and/or numbers must not exceed h/4 nor be less than h/6;

(x) The space between adjacent letters having sloping sides must not exceed h/8 nor be less than h/10;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of no less than h/6; and
§300.15 Prohibitions.

In addition to the prohibitions in section 300.4, it is unlawful for any person to:
(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.
(b) Use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under section 300.13.
(c) Use a high seas fishing vessel on the high seas that is not marked in accordance with §300.14.

§300.16 Penalties.

(a) Any person, any high seas fishing vessel, the owner or operator of such vessel, or any person who has been issued or has applied for a permit, found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions, permit sanctions, and forfeiture provisions prescribed by the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws.
(b) Permits under this subpart may be subject to permit sanctions prescribed by the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws if any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue.

§300.17 Reporting.

(a) General. The operator of any vessel permitted under this subpart must report high seas catch and effort information to NMFS in a manner set by this section. Reports must include: identification information for vessel and operator; operator signature; crew size; whether an observer is aboard; target species; gear used; dates, times, locations, and conditions under which fishing was conducted; species and amounts of fish retained and discarded; and details of any interactions with sea turtles or birds.

(b) Reporting options. (1) For the following fisheries, a permit holder must maintain and submit the listed reporting forms to the appropriate address and in accordance with the time limits required by the relevant regulations:
(i) Antarctic—CCAMLR Logbook (50 CFR 300.107);
(ii) Atlantic—Fishing Vessel Log Reports (50 CFR 648.7(b));
(iii) Atlantic Pelagic Longline—Longline Logbook (50 CFR 630.5);
(iv) Atlantic Purse Seine—Purse Seine Logbook (50 CFR 285.54);
(v) Pacific Pelagic Longline—Longline Logbook (50 CFR 660.14(a));
(vi) Eastern Pacific Purse Seine—IATTC Logbook (50 CFR 300.22); or
(vii) Western Pacific Purse Seine—South Pacific Tuna Treaty Logbook (50 CFR 300.34).
(2) For the albacore troll fisheries in the North and South Pacific, a permit holder must report high seas catch and effort by maintaining and submitting the log provided by the Regional Administrator, Southwest Region, NMFS.
(3) For other fisheries, a permit holder must report high seas catch and effort by maintaining and submitting records, specific to the fishing gear being used, on forms provided by the Regional Administrator of the NMFS Region which issued the permit holder’s HSFCA permit.
(c) Confidentiality of statistics. Information submitted pursuant to this subpart will be treated in accordance with the provisions of 50 CFR part 600 of this title.
§ 300.20 Purpose and scope.

The regulations in this subpart implement the Tuna Conventions Act of 1950 (Act) and the Atlantic Tunas Convention Act of 1975. The regulations provide a mechanism to carry out the recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States. They also carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas for the conservation of bluefin tuna, so far as they affect vessels and persons subject to the jurisdiction of the United States.

[64 FR 44430, Aug. 16, 1999]

§ 300.21 Definitions.

In addition to the terms defined in § 300.2, in the Act, the Convention for the Establishment of an Inter-American Tropical Tuna Commission, and the International Convention for the Conservation of Atlantic Tunas, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Conventions, the definition in this section shall apply.

**Bigeye tuna** means the species *Thunnus obesus*.

**Bluefin tuna** means the fish species *Thunnus thynnus* that is found in any ocean area.

**Commission’s Yellowfin Regulatory Area (CYRA)** means the waters bounded by a line extending westward from the mainland of North America along the 40° N. latitude parallel, and connecting the following coordinates:

- 40° N. lat., 125° W. long.;
- 20° N. lat., 125° W. long.;
- 20° N. lat., 120° W. long.;
- 5° N. lat., 120° W. long.;
- 5° N. lat., 110° W. long.;
- 10° S. lat., 110° W. long.;
- 10° S. lat., 90° W. long.;
- 30° S. lat., 90° W. long.; and then eastward along the 30° S. latitude parallel to the coast of South America.

**Convention Area** means the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat., and 150° W. long.

**Fish aggregating device (FAD)** means a manmade raft or other floating object used to attract tuna and make them available to fishing vessels.

**Fishing trip** means a period of time between landings when fishing is conducted.

**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 fishing or for assisting or supporting a vessel engaged in fishing, except purse seine skiffs.

**Floating object** means any natural object or FAD around which fishing vessels may catch tuna.

**Incidental catch or incidental species** means species caught while fishing with the primary purpose of catching a different species. An incidental catch is expressed as a percentage of the weight of the total fish on board.

**Land or Landing** means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

**Observer** means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

**Pacific bluefin tuna** means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

**Regional Administrator** means the Administrator, Southwest Region, NMFS, or his designee.

**Tag** means the dealer tag, a flexible self-locking ribbon issued by NMFS for the identification of bluefin tuna under § 300.26, or the BSD tag specified under § 635.42 (a)(2) of this title.

**Tender vessel** means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

**Transship** means to unload fish from a vessel that caught fish to another vessel.

**Transshipment receiving vessel** means any vessel, boat, ship, or other craft
§ 300.22 Yellowfin tuna—Recordkeeping and written reports.

The master or other person in charge of a fishing vessel, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of all operations conducted from the fishing vessel, entering for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified are accurately entered in the log.

EFFECTIVE DATE NOTE: At 66 FR 49320, Sept. 27, 2001, §300.22 was amended by revising the section heading, designating the existing paragraph as (a) and adding new paragraph (b), effective Oct. 29, 2001. For the convenience of the user, the revised and added text is set forth as follows:

§ 300.22 Recordkeeping and reporting.

* * * * *

(b) The owner of any fishing vessel that uses purse seine, longline, drift gillnet, harpoon, or troll fishing gear to harvest tuna in the Convention Area for sale or a person authorized in writing to serve as agent for the owner must provide such information about the vessel and its characteristics as the Regional Administrator requests to conform to IATTC actions to establish a regional register of all vessels used to fish for species under IATTC purview in the Convention Area. This initially includes, but is not limited to, vessel name and registration number; a photograph of the vessel with the registration number showing; vessel length, beam and moulded depth; gross tonnage and hold capacity in cubic meters and tonnage; engine horsepower; date and place where built; and type of fishing method or methods used.

§ 300.23 Yellowfin tuna—Persons and vessels exempted.

This subpart does not apply to:

(a) Any person or vessel authorized by the IATTC, the Assistant Administrator, or any state of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

§ 300.24 Pacific bluefin tuna—Dealer permits.

(a) General. A dealer importing Pacific bluefin tuna, or purchasing or receiving for export Pacific bluefin tuna first landed in the United States, must have a valid permit issued under this section.

(b) Application. A dealer must apply for a permit in writing on an appropriate form obtained from NMFS. The application must be signed by the dealer and be submitted to NMFS at least 30 days before the date upon which the dealer desires to have the permit made effective. The application must contain the following information: Company name, principal place of business, owner’s or owners’ names, applicant’s name (if different from owner or owners) and mailing address and telephone number, and any other information required by NMFS.

(c) Issuance. (1) Except as provided in subpart D of 15 CFR part 904, NMFS will issue a permit within 30 days of receipt of a completed application.

(2) NMFS will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) Duration. Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) Alteration. Any permit that is substantially altered, erased, or mutilated is invalid.

(f) Replacement. NMFS may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) Transfer. A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) Inspection. The dealer must keep the permit issued under this section at his/her principal place of business. The
permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) Sanctions. The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) Fees. NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, 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 on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) Change in application information. Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to NMFS in writing. The permit is void if any change in information is not reported within 15 days.

§ 300.26 Pacific bluefin tuna—Tags.

(a) Issuance. NMFS will issue numbered tags to each person receiving a dealer’s permit under §300.24.

(b) Transfer. Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) Affixing tags. At the discretion of dealers permitted under §300.24, a tag issued under paragraph (a) of this section may be affixed to each Pacific bluefin tuna purchased or received by the dealer. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel and tag numbers must be recorded on NMFS reports required by §300.25(a) and any documents accompanying the shipment of Pacific bluefin tuna for domestic commercial use or export.

(d) Removal. A NMFS-issued numbered tag affixed to any Pacific bluefin tuna at the option of any permitted dealer under paragraph (c) of this section or any tag affixed to any Pacific bluefin tuna to meet the requirements of §635.42(a)(2) of this title must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number on each tag attached
§ 300.27 Pacific bluefin tuna—Documentation requirements.

Bluefin tuna imported into, or exported or re-exported from the customs territory of the United States is subject to the documentation requirements specified in §§635.41 through 635.44 of this title.

§ 300.28 Prohibitions.

In addition to the prohibitions in §300.4, it is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) Fish on floating objects in the Convention Area using any gear type specified by the Regional Administrator’s notification of closure issued under §300.29.

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

(e) Remove any NMFS-issued numbered tag affixed to a Pacific bluefin tuna at the option of a permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of §635.42(a)(2) of this title, before removal is allowed under §300.26, or fail to write the tag number on the shipping package or container as specified in §300.26.

(g) Reuse any NMFS-issued numbered tag affixed to a Pacific bluefin tuna at the option of a permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of §635.42(a)(2) of this title or reuse any tag number previously written on a shipping package or container as prescribed by §300.26.


Effective Date Note: At 66 FR 49320, Sept. 27, 2001, §300.28 was amended by adding paragraphs (h) through (l), effective Oct. 29, 2001. For the convenience of the user, the added text is set forth as follows:

§ 300.28 Prohibitions.

* * * * *

(h) Fail to retain any bigeye, skipjack, or yellowfin tuna brought on board a purse seine vessel in the Convention Area, except fish unfit for human consumption due to spoilage, and except on the last set of the trip if the well capacity is filled;

(i) When using purse seine gear to fish for tuna in the Convention Area, fail to release any non-tuna species as soon as practicable after being identified on board the vessel during the brailing operation;

(j) Land any non-tuna fish species taken in a purse seine set in the Convention Area;

(k) Fail to use the sea turtle handling, release, and resuscitation procedures in §300.29(e); or

(l) Fail to report information when requested by the Regional Administrator under §300.21.

§ 300.29 Eastern Pacific fisheries management.

(a) Notification of IATTC recommendations. The Regional Administrator will directly notify owners or agents of U.S. tuna vessels of any fishery management recommendations made by the IATTC and approved by the Department of State that will affect fishing or other activities by U.S. parties with fishery interests in the Convention Area. As soon as practicable after such notification, the Regional Administrator will announce approved IATTC recommendations in the Federal Register.

(b) Tuna quotas. (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when
NMFS closes the fishery for a specific species.

(2) The Regional Administrator may close the U.S. fishery for yellowfin, bigeye, or skipjack tuna or any other tuna species in the Convention Area or portion of the Convention Area when advised by the Director of Investigations of the IATTC that the associated quota has been or is projected to be reached. Any such closure may include:
(i) An allowance for an incidental catch that may be landed while fishing for other tuna species;
(ii) A prohibition on the further setting of specified gear types on floating objects by U.S. vessels in the Convention Area;
(iii) Provisions for vessels that are at sea during an announced closure to fish unrestricted until the fishing trip is completed;
(iv) Provisions for vessels at sea with an observer on board during any closure to land fish unrestricted if the landing occurs after December 31; or
(v) Other measures to ensure that the conservation and management measures of the IATTC are achieved.

(3) The Regional Administrator will announce any such closures directly to the owners or agents of U.S. vessels who are fishing in or are eligible to fish in the Convention Area.

(4) As soon as practicable after being advised of the quota attainment or projection under paragraph (b)(2) of this section, the Regional Administrator will publish an announcement of the closure in the FEDERAL REGISTER.

(e) Bycatch reduction measures. (1) Through December 31, 2001, all purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna brought on board the vessel after a set, except fish deemed unfit for human consumption for other than reason of size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire fish catch brought on board.

(2) All purse seine vessels must release all sharks, billfishes, rays, mahimahi (dorado), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

(3) All purse seine vessels must apply special sea turtle handling and release procedures, as follows:
(i) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the turtle;
(ii) If a turtle is entangled in the net, net roll shall stop as soon as the turtle comes out of the water and shall not resume until the turtle has been disentangled and released;
(iii) If, in spite of the measures taken under paragraphs (e)(3)(i) and (ii) of this section, a turtle is accidentally brought on board the vessel alive and active, the vessel’s engine shall be disengaged and the turtle shall be released as quickly as practicable;
(iv) If a turtle brought on board under paragraph (e)(3)(iii) of this section is alive but comatose or inactive, the resuscitation procedures described in §223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

Subpart D—South Pacific Tuna Fisheries

[64 FR 44431, Aug. 16, 1999]
§ 300.32 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless excepted by §300.39. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a duly certified copy, facsimile or telex confirmation must be carried on board the vessel when in the Licensing Area or Closed Areas and must be produced at the request of authorized officers, authorized party officers, or authorized inspectors. Prior to receipt of the license, but after issuance, a vessel may be used to fish, provided the number of the issued license is available on board.

(c) Application forms for licenses to use a vessel to fish in the Licensing Area may be requested from, and upon
completion, must be returned to, the Regional Administrator. All of the information requested on the form and the following must be supplied before the application will be considered complete:

(1) The licensing period for which the license is requested.
(2) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty.
(3) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance.
(4) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, reasonable assurances that the owner of charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines.
(5) A copy of the vessel’s USCG Certificate of Documentation.

(d) The number of available licenses are set forth in Schedule 2 of Annex II of the Treaty.
(e) Applications for vessels may be submitted at any time; complete applications will be forwarded to the Secretary of State for transmittal to the Administrator.
(f) The Secretary, in consultation with the Secretary of State, may determine that a license application for a vessel should not be forwarded to the Administrator if:
(1) The application is not in accord with the Treaty, Act, or regulations;
(2) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;
(3) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or
(4) The owner or charter has not paid any final penalty assessed by the Secretary in accordance with the Act.
(g) An applicant will be promptly notified if that applicant’s license application will not be forwarded to the Administrator, and of the reasons therefor. Within 15 days of notification by the Regional Administrator that the application will not be forwarded, an applicant may request reconsideration by providing a petition for reconsideration accompanied by new or additional information.

§ 300.33 Compliance with applicable national laws.

The operator of the vessel shall comply with each of the applicable national laws, and the operator of the vessel shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

§ 300.34 Reporting requirements.

(a) License holders shall comply with the reporting requirements of parts 4 and 5 of Annex I to the Treaty.
(b) Information provided by license holders under Schedule 5 of Annex I of the Treaty shall be provided on the designated Forum Fisheries Agency form(s) to the Regional Administrator within 2 days of reaching port.
(c) Information provided by license holders under Schedule 6 of Annex I of the Treaty shall be provided on the designated Forum Fisheries Agency form(s) to the Regional Administrator within 2 days of completing unloading.
(d) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances that has the effect of rendering any of the information provided false, incomplete or misleading shall be communicated immediately to the Regional Administrator.
§ 300.35 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 Food and Agricultural Organization standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) On both sides of the vessel’s hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with the background extending to provide a border around the mark of not less than 16.7 cm.

(b) On the vessel’s deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high, and having a stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm.

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

§ 300.36 Closed area stowage requirements.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

§ 300.37 Radio monitoring.

The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

§ 300.38 Prohibitions.

(a) Except as provided for in §300.39, in addition to the prohibitions in §300.4, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

1. To violate the Act or any provision of any regulation or order issued pursuant to Act.

2. To use a vessel for fishing in violation of an applicable national law.

3. To violate the terms and conditions of any fishing arrangement to which that person is a party.

4. To use a vessel for fishing in a Limited Area in violation of the requirements set forth in Schedule 3 of Annex I of the Treaty on “Limited Areas”.

5. To use a vessel for fishing in any Closed Area.

6. To refuse to permit any authorized officer or authorized party officer to board a fishing vessel for purpose of conducting a search or inspection in connection with the enforcement of the Act or the Treaty.

7. To refuse to comply with the instructions of an authorized officer or authorized party officer relating to fishing activities under the Treaty.

8. To refuse to permit an authorized inspector full access to any place where fish taken in the Licensing Area is unloaded.

9. To refuse to allow an authorized inspector to remove samples of fish from a vessel that fished in the Licensing Area.

10. To forcibly assault, resist, oppose, impede, intimidate, or interfere with:

(i) Any authorized officer, authorized party officer or authorized inspector in the conduct of a search or inspection in connection with the enforcement of these regulations, the Act or the Treaty; or

(ii) An observer in the conduct of observer duties under the Treaty.

11. To transship fish on board a vessel that fished in the Licensing Area,
except in accordance with the conditions set out in parts 3 and 4 of Annex I to the Treaty.

(b) Except as provided for in §300.39, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area:

1. To use a vessel to fish unless validly licensed as required by the Administrator.

2. To use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental bycatch.

3. To use a vessel for fishing by any method, except the purse-seine method.

4. To use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license.

5. To operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels.

6. To use a vessel to fish in a manner inconsistent with an order issued by the Secretary under §300.42 (section 11 of the Act).

7. Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use aircraft in association with fishing activities of a vessel, unless it is identified on the license application for the vessel, or any amendment thereto.

§300.39 Exceptions.

(a) The prohibitions of §300.38 and the licensing requirements of §300.32 do not apply to fishing for albacore tuna by vessels using the trolling method outside of the 200 nautical mile fisheries zones of the Pacific Island Parties.

(b) The prohibitions of §300.38(a)(4), (a)(5), and (b)(3) do not apply to fishing under the terms and conditions of a fishing arrangement.

§300.40 Civil penalties.

The procedures of 15 CFR part 904 apply to the assessment of civil penalties, except as modified by the requirements of section 8 of the Act.

§300.41 Investigation notification.

Upon commencement of an investigation conducted under §300.42 (section 11 of the Act), the operator of any vessel concerned shall have 30 days after receipt of notification of the investigation and the operator’s rights under section 10(b)(1) to submit comments, information, or evidence bearing on the investigation, and to request in writing that the Secretary provide the operator an opportunity to present the comments, information, or evidence orally to the Secretary or the Secretary’s representative.

§300.42 Findings leading to removal from fishing area.

(a) Following an investigation conducted under §300.39, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel that has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding that:

1. The fishing vessel—

   (i) While fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under paragraph 2 of Article 3 of the Treaty, the fishing is not authorized to be conducted in the Licensing Area without a license;

   (ii) Was involved in any incident in which an authorized officer, authorized party officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcibly resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by the Act or the Treaty; or

   (iii) Has not made full payment within 60 days of any amount due as a result of a final judgement or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

   (iv) Was not represented by an agent for service of process in accordance with the Treaty; or

2. There is probable cause to believe that the fishing vessel—

   (i) Was used in violation of section 5(a)(4), (a)(5), (b)(2), or (b)(3) of the Act;
§ 300.43 Observers.

(a) The operator and each member of the crew of a vessel shall allow and assist any person identified as an observer under the Treaty by the Pacific Island Parties:

(1) To board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary.

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel’s records, including its log and documentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area.

(3) To disembark at the point and time notified by the Pacific Island Parties to the Secretary.

(4) To carry out observer duties safely.

(b) The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation and medical facilities of reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

§ 300.44 Other inspections.

The operator and each member of the crew of any vessel from which any fish taken in the Licensing Area is unloaded or transshipped shall allow, or arrange for, and assist any authorized inspector, authorized party officer, or authorized officer to have full access to any place where the fish is unloaded or transshipped, to remove samples, to have full access to the vessel’s records, including its log and documentation for the purpose of inspection and photocopying, and to gather any other information relating to fisheries in the Licensing Area without interfering unduly with the lawful operation of the vessel.

Subpart E—Pacific Halibut Fisheries


§ 300.60 Purpose and scope.

This subpart implements the North Pacific Halibut Act of 1982 (Act) and is intended to supplement, not conflict with, the annual fishery management measures adopted by the International Pacific Halibut Commission (Commission) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention).

§ 300.61 Definitions.

In addition to the terms defined in §300.2 and those in the Act and the Convention, the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, the Act, or the Convention, the definition in this section shall apply.
§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

Catch sharing plans (CSP) and local area management plans (LAMP) may be developed by the appropriate regional fishery management council, and approved by NMFS, for portions of the fishery. Any approved CSP or LAMP may be obtained from the Administrator, Northwest Region, or the Administrator, Alaska Region.

(a) The catch sharing plan for area 2A provides a framework that shall be applied to the annual Area 2A total allowable catch (TAC) adopted by the Commission, and shall be implemented through domestic and Commission regulations, which will be published in the Federal Register each year before March 15. The Area 2A CSP allocates halibut among the treaty Indian fishery, segments of the non-Indian commercial fishery, and segments of the recreational fishery.

(1) Each year, before January 1, NMFS will publish a proposal to govern the recreational fishery under the CSP
for the following year and will seek public comment. The comment period will extend until after the Commission’s annual meeting, so the public will have the opportunity to consider the final area 2A total allowable catch (TAC) before submitting comments. After the Commission’s annual meeting and review of public comments, NMFS will publish in the Federal Register the final rule governing sport fishing in area 2A. Annual management measures may be adjusted inseason by NMFS.

(2) A portion of the commercial TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the Federal Register along with the annual salmon management measures.

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the primary directed longline sablefish fishery north of 46°53'18" N. lat. (Pt. Chehalis, WA), which is regulated under 50 CFR 660.323(a)(2). This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt) provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the Federal Register along with the annual salmon management measures.

(4) The commercial longline fishery in area 2A is governed by the annual management measures published pursuant to §§300.62 and 300.63.

(5) The treaty Indian fishery is governed by §300.64 and tribal regulations. The annual quota for the fishery will be announced with the Commission regulations under §300.62.

(b) The catch sharing plan for area 4 allocates the annual TAC among Areas 4C, 4D, and 4E, and will be implemented by the Commission in annual management measures published pursuant to §300.62.

(c) (Applicable through December 31, 1999). A person may retain halibut taken with setline gear in Area 4E that are smaller than the size limit specified in the annual management measures published pursuant to §300.62, provided that no person may sell or barter such halibut.

(d) The LAMP for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of §300.63(d), Sitka Sound means (See Figure 1) to subpart E of the part:

   (i) With respect to §300.63(d)(2), that part of the Commission regulatory area 2C that is enclosed on the north and east by a line from Kruzof Island at 57°26'30" N. lat., 135°45'10" W. long., to Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and a line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'37" W. long., and is enclosed on the south and west by a line from Cape Edgecumbe at 56°59'54" N. lat., 135°51'27" W. long. to Vasilief Rock at 56°48'56" N. lat., 135°32'30" W. long. to the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long., to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.
(i) With respect to §300.63(d)(3) and (4), that part of the Commission regulatory area 2C that is enclosed on the north and east by a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long., to Chichagof Island at 57°22′03″ N. lat., 135°43′00″ W. long., and a line from Chichagof Island at 57°22′35″ N. lat., 135°41′18″ W. long., to Baranof Island at 57°22′17″ N. lat., 135°40′57″ W. long.; and is enclosed on the south and west by a line running from Sitka Point at 56°59′23″ N. lat., 135°49′34″ W. long., to Hanus Point at 56°51′55″ N. lat., 135°30′30″ W. long., to the green day marker in Dorothy Narrows at 56°49′17″ N. lat., 135°22′45″ W. long., to Baranof Island at 56°49′17″ N. lat., 135°22′36″ W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) in overall length, as defined in §300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined in §300.61, within Sitka Sound as defined in paragraph (d)(1)(ii) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) in overall length, as defined in §300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear in Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season from retaining more than 2,000 lbs. (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(4) No charter vessel, as defined in §300.61, shall engage in sport fishing, as defined in §300.61, for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined in §300.61, for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (4)(i) of this section, halibut harvested outside Sitka Sound, as defined in (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in 50 CFR 300.61, for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(e) Prohibition on halibut fishing and anchoring in the Sitka Pinnacles Marine Reserve.

(1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

- 56°55.5′N lat., 135°54.0′W long;
- 56°57.0′N lat., 135°54.0′W long;
- 56°57.0′N lat., 135°57.0′W long;
- 56°55.5′N lat., 135°57.0′W long.

(2) No person shall engage in sport fishing, as defined in §300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

§300.64 Fishing by U.S. treaty Indian tribes.

(a) Halibut fishing in subarea 2A–1 by members of U.S. treaty Indian tribes located in the State of Washington is governed by this section.

(b) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear in conformance with the season and quota established annually by the Commission.

(c) Commercial fishing periods and management measures to implement paragraph (b) of this section will be established by treaty Indian tribal regulations.

(d) Commercial fishing for halibut by treaty Indians shall comply with the Commission’s management measures governing size limits, careful release of halibut, logs, and fishing gear (published pursuant to §300.62), except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(e) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A–1 is permitted with hook-
§ 300.64

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and-line gear from January 1 to December 31.

(f) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (b) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(g) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(h) Any member of a U.S. treaty Indian tribe who is engaged in commercial or ceremonial and subsistence fishing under this section must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in United States v. Washington 384 F. Supp. 312 (W.D. Wash., 1974).

(i) The following table sets forth the fishing areas of each of the 12 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe’s fishing area may be revised as ordered by a Federal Court.

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Boundaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOH</td>
<td>Between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River), and east of 125°44′00″ W. long.</td>
</tr>
<tr>
<td>JAMESTOWN SK’KLALLAM</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown SK’KLallam Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>LOWER ELWA SK’KLALLAM</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 605 F. Supp. 1443, to be places at which the Lower Elwa SK’KLallam Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>LUMMI</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1443, to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>MAKAH</td>
<td>North of 48°02′15″ N. lat. (Norwegian Memorial), west of 123°42′30″ W. long., and east of 125°44′00″ W. long.</td>
</tr>
<tr>
<td>PORT GAMBLE SK’KLALLAM</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 605 F. Supp. 1442, to be places at which the Port Gamble SK’KLallam Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>QUILEUTE</td>
<td>Between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Quillayute River), and east of 125°44′00″ W. long.</td>
</tr>
<tr>
<td>QUINAULT</td>
<td>Between 47°40′36″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis), and east of 125°44′00″ W. long.</td>
</tr>
<tr>
<td>SKOKOMISH</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>SUQUAMISH</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>SWINOMISH</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>TULALIP</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
</tbody>
</table>
§ 300.65 Prohibitions.

In addition to the prohibitions in §300.4, the following prohibitions apply within this subpart. It is unlawful for any person to fish for halibut except in accordance with:

(a) The management measures published under §300.62.
(b) The catch sharing plans and management measures implemented under §300.63.
Figure 1 to Subpart E—Sitka Local Area Management Plan

Figure 1. Sitka Local Area Management Plan
   a. Map
§ 300.90 Purpose and scope.

This subpart implements the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631–3644) (Act) and is intended to supplement, not conflict with, the fishery regimes and Fraser River Panel regulations adopted under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985 (Treaty).

§ 300.91 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

All-citizen means any person who is not a treaty Indian fishing in that treaty Indian’s tribal treaty fishing places pursuant to treaty Indian tribal fishing regulations (whether in compliance with such regulations or not).

Authorized officer means, in addition to those individuals identified under authorized officer at § 300.2, any state, Federal, or other officer as may be authorized by the Secretary in writing, including any treaty Indian tribal enforcement officer authorized to enforce tribal fishing regulations.

Commission means the Pacific Salmon Commission established under the Pacific Salmon Treaty.

Consistent regulation or consistent order means any Federal, state, or treaty Indian tribal regulation or order that is in addition to and not in conflict with (at least as restrictive as) any regime of the Commission, Fraser River Panel regulation, inseason order of the Secretary, or these regulations.

Fishing gear—

(1) Gill net means a fishing net of single web construction, not anchored,
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tied, staked, placed, or weighted in such a manner that it cannot drift.

(2) **Purse seine** means all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line and purse rings and of mesh net webbing fashioned in such a manner that it is used to encircle fish, and in addition prevent their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.

(3) **Reef net** means a non-self-fishing open bunt square or rectangular section of mesh netting suspended between two anchored boats fashioned in such a manner that to impound salmon passing over the net, the net must be raised to the surface.

(4) **Troll fishing gear** means one or more lines that drag hooks with bait or lures behind a moving fishing vessel.

(5) **Treaty Indian fishing gear** means fishing gear defined authorized, and identified under treaty Indian tribal laws and regulations in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

*Fraser River Panel* means the Fraser River Panel established by the Pacific Salmon Treaty.

*Fraser River Panel Area (U.S.)* means the United States’ portion of the Fraser River Panel Area specified in Annex II of the Treaty as follows:

(1) The territorial water and the high seas westward from the western coast of Canada and the United States of America and from a direct line drawn from Bonilla Point, Vancouver Island, to the lighthouse of Tatoosh Island, Washington—which line marks the entrance of Juan de Fuca Strait—and embraced between 48° and 49° N. lat., excepting therefrom, however, all the waters of Barkley Sound, eastward of a straight line drawn from Amphitrite Point to Cape Beale and all the waters of Nitinat Lake and the entrance thereto.

(2) The waters included within the following boundaries: Beginning at Bonilla Point, Vancouver Island, thence along the aforesaid direct line drawn from Bonilla Point to Tatoosh Lighthouse, Washington, described in paragraph (1) of this definition, thence to the nearest point of Cape Flattery, thence following the southerly shore of Juan de Fuca Strait to Point Wilson, on Whidbey Island, thence following the western shore of the said Whidbey Island, to the entrance to Deception Pass, thence across said entrance to the southern side of Reservation Bay, on Fidalgo Island, thence following the western and northern shore line of the said Fidalgo Island to Swinomish Slough, crossing the said Swinomish Slough, in line with the track of the Great Northern Railway (Burlington Northern Railroad), thence northerly following the shoreline of the mainland to Atkinson Point at the northerly entrance to Burrard Inlet, British Columbia, thence in a straight line to the southern end of Bowen Island, then westerly following the southern shore of Bowen Island to Cape Roger Curtis, thence in a straight line to Gower Point, thence westerly following the shoreline to Welcome Point on Sechelt Peninsula, thence in a straight line to Point Young on Lasqueti Island, thence in a straight line to Dorcas Point on Vancouver Island, thence following the eastern and southern shores of the said Vancouver Island, to the starting point at Bonilla Point, as shown on the British Admiralty Chart Number 579, and on the U.S. Coast and Geodetic Survey Chart Number 6300, as corrected to March 14, 1930, copies of which are annexed to the 1930 Convention between Canada and the United States of America for Protection, Preservation, and Extension of the Sockeye Salmon Fishery in the Fraser River System as amended, signed May 26, 1930. [Note: U.S. Coast and Geodetic Survey Chart Number 6300 has been replaced and updated by NOAA Chart Number 18400.]

(3) The Fraser River and the streams and lakes tributary thereto.

(4) The Fraser River Panel Area (U.S.) includes Puget Sound Management and Catch Reporting Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7B, 7C, 7D, and 7E as defined in the Washington State Administrative Code at Chapter 220–22 as of June 27, 1986.

*Fraser River Panel regulations* means regulations applicable to the Fraser River Panel Area that are recommended by the Commission (on the
basis of proposals made by the Fraser River Panel and approved by the Secretary of State.

*Mesh size* means the distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh of a net.

*Pink salmon* means *Oncorhynchus gorbuscha.*

*Sockete salmon* means the anadromous form of *Oncorhynchus nerka.*

*Treaty fishing places* (of an Indian tribe) means locations within the Fraser River Panel Area (U.S.) as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), to be places at which that treaty Indian tribe may take fish under rights secured by treaty with the United States.

*Treaty Indian* means any member of a treaty Indian tribe whose treaty fishing place is in the Fraser River Panel Area (U.S.) or any assistant to a treaty Indian authorized to assist in accordance with §300.95(d).

*Treaty Indian tribe* means any of the federally recognized Indian tribes of the State of Washington having fishing rights secured by treaty with the United States to fish for salmon stocks subject to the Pacific Salmon Treaty in treaty fishing places within the Fraser River Panel Area (U.S.). Currently these tribes are the Makah, Tribe, Lower Elwha Klallam Tribe, Port Gamble Klallam Tribe, Jamestown Klallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and the Tulalip Tribe.

§ 300.92 Relation to other laws.

(a) Insofar as they are consistent with this part, any other applicable Federal law or regulation, or any applicable law and regulations of the State of Washington or of a treaty Indian tribe with treaty fishing rights in the Fraser River Panel Area (U.S.) will continue to have force and effect in the Fraser River Panel Area (U.S.) described in §300.91, notwithstanding any dispute or negotiation between the United States and Canada regarding their respective jurisdictions, until such time as different boundaries are published by the United States.

(c) Any person fishing in the Fraser River Panel Area (U.S.) who also fishes for groundfish in the EEZ should consult Federal regulations at part 663 of this title for applicable requirements, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with §663.6. Federal regulations governing salmon fishing in the EEZ, which includes a portion of the Fraser River Panel Area (U.S.), are at part 661 of this title. Annual regulatory modifications are published in the Federal Register.

(d) Except as otherwise provided in this subpart, general provisions governing off-reservation fishing by treaty Indians are found at 25 CFR part 249, subpart A. Additional general and specific provisions governing treaty Indian fisheries are found in regulations and laws promulgated by each treaty Indian tribe for fishermen fishing pursuant to tribal authorization.

(e) Nothing in this subpart relieves a person from any other applicable requirements lawfully imposed by the United States, the State of Washington, or a treaty Indian tribe.

§ 300.93 Reporting requirements.

Any person fishing for sockeye or pink salmon within the Fraser River Panel Area (U.S.) and any person receiving or purchasing fish caught by such persons are subject to State of Washington reporting requirements at Washington Administrative Code, Chapter 220–69. Treaty Indian fishermen are subject also to tribal reporting requirements. No separate Federal reports are required.

§ 300.94 Prohibitions and restrictions.

In addition to the prohibitions in §300.4, the following prohibitions and restrictions apply.

(a) In addition to the prohibited acts set forth in the Act at 16 U.S.C. 3637(a), the following restrictions apply to
§ 300.95 Treaty Indian fisheries.

(a) Any treaty Indian must comply with this section when fishing for sockeye and pink salmon at the treaty Indian tribe’s treaty fishing places in the Fraser River Panel Area (U.S.) during the time the Commission or the Secretary exercises jurisdiction over those fisheries. Fishing by a treaty Indian outside the applicable Indian tribe’s treaty fishing places will be subject to the Fraser River Panel regulations and inseason orders applicable to all citizens, as well as to the restrictions set forth in this section.

(b) Nothing in this section will relieve a treaty Indian from any applicable law or regulation imposed by a treaty Indian tribe, or from requirements lawfully imposed by the United States or the State of Washington in accordance with the requirements of
§ 300.97

Fishing and Related Activities


(c) Identification. (1) Any treaty Indian fishing under the authority of this subpart must have in his or her possession at all times while fishing or engaged in any activity related to fishing the treaty Indian identification required by 25 CFR 249.3 or by applicable tribal law.

(2) Any person assisting a treaty Indian under the authority of paragraph (d) of this section must have in his or her possession at all such times a valid identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as a person qualified to assist a treaty Indian. The identification card must include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and identification number of the treaty Indian whom the assistant is authorized to assist.

(3) Identification described in paragraph (c) (1) or (2) of this section must be shown on demand to an authorized officer by the treaty Indian or authorized assistant.

(4) Any treaty Indian fishing under this subpart must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974).

(d) Fishing assistance. (1) Any member of a treaty Indian tribe fishing under this subpart may, if authorized by the treaty Indian’s tribe, receive fishing assistance from, and only from, the treaty Indian tribal member’s spouse, forebears, children, grandchildren, and siblings, as authorized by the U.S. District Court for the Western District of Washington in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974). For purposes of this section, the treaty Indian tribal member whom the assistant is authorized to assist must be present aboard the fishing vessel at all times while engaged in the exercise of treaty Indian fishing rights subject to this subpart.

(2) No treaty Indian may, while fishing at a treaty fishing place in accordance with treaty-secured fishing rights, permit any person 16 years of age or older other than the authorized holder of a currently valid identification card issued in accordance with the requirements of paragraphs (c) (1) and (2) of this section to fish for said treaty Indian, assist said treaty Indian in fishing, or use any gear or fishing location identified as said treaty Indian’s gear or location.

(3) Treaty Indians are prohibited from participating in a treaty Indian fishery under this section at any time persons who are not treaty Indians are aboard the fishing vessel or in contact with fishing gear operated from the fishing vessel, unless such persons are authorized employees or officers of a treaty Indian tribe or tribal fisheries management organization, the Northwest Indian Fisheries Commission, the Commission, or a fisheries management agency of the United States or the State of Washington.

§ 300.96 Penalties.

Any treaty Indian who commits any act that is unlawful under this subpart normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such persons in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties and procedures described in the Magnuson Act.

§ 300.97 Inseason orders.

(a) During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Fraser River Panel. Inseason orders will be consistent with domestic legal obligations. Violation of such inseason orders is violation of this subpart.

(b) Notice of inseason orders. (1) Official notice of such inseason orders is available from NMFS (for orders applicable to all-citizen fisheries) and from the Northwest Indian Fisheries Commission (for orders applicable to treaty Indian fisheries) through the following Area Code 206 toll-free telephone hotlines: All-citizen fisheries: 1–800–562–6513; Treaty Indian fisheries: 1–800–562–6142.
§ 300.100  Notice of inseason orders of the Secretary and other applicable tribal regulations may be published and released according to tribal procedures in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974).

(3) Inseason orders may also be communicated through news releases to radio and television stations and newspapers in the Fraser River Panel Area (U.S.).

(4) Inseason orders of the Secretary will also be published in the Federal Register as soon as practicable after they are issued.

Subpart G—Antarctic Marine Living Resources

Authority: 16 U.S.C. 2431 et seq.

§ 300.100  Purpose and scope.

(a) This subpart implements the Antarctic Marine Living Resources Convention Act of 1984 (Act).

(b) This subpart regulates—

(1) The harvesting of Antarctic marine living resources or other associated activities by any person subject to the jurisdiction of the United States or by any vessel of the United States.

(2) The importation into the United States of any Antarctic marine living resource.

§ 300.101  Definitions.

In addition to the terms defined in §300.2, in the Act, and in the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980 (Convention), Convention, the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, such Act, or such Convention, the definition in this section shall apply.


Antarctic convergence means a line joining the following points along the parallels of latitude and meridians of longitude:

<table>
<thead>
<tr>
<th>Lat.</th>
<th>Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>45° S.</td>
<td>30° E.</td>
</tr>
<tr>
<td>50° S.</td>
<td>30° E.</td>
</tr>
<tr>
<td>55° S.</td>
<td>30° E.</td>
</tr>
<tr>
<td>60° S.</td>
<td>50° W.</td>
</tr>
<tr>
<td>50° S.</td>
<td>0</td>
</tr>
</tbody>
</table>

Antarctic finfishes include the following:

<table>
<thead>
<tr>
<th>Scientific name</th>
<th>Common name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gobionotothen gibberifrons</td>
<td>Humped rockcod.</td>
</tr>
<tr>
<td>Notothenia rossii</td>
<td>Marbled rockcod.</td>
</tr>
<tr>
<td>Lepidonotothen kempii</td>
<td>Striped-eyed rockcod.</td>
</tr>
<tr>
<td>Dissostichus eleginoides</td>
<td>Patagonian toothfish.</td>
</tr>
<tr>
<td>Dissostichus mawsoni</td>
<td>Antarctic toothfish.</td>
</tr>
<tr>
<td>Electrona carlsbergi</td>
<td>Lanternfish.</td>
</tr>
<tr>
<td>Patagonololthten brevicauda guntheri</td>
<td>Patagonian rockcod.</td>
</tr>
<tr>
<td>Pleuragramma antarcticum</td>
<td>Antarctic silverfish.</td>
</tr>
<tr>
<td>Trematomus spp.</td>
<td>Antarctic cods.</td>
</tr>
<tr>
<td>Chaenocephalus aceratus</td>
<td>Blackfin icefish.</td>
</tr>
<tr>
<td>Chaenodraco acutus</td>
<td>Spiny icefish.</td>
</tr>
<tr>
<td>Champsocephalus gunnari</td>
<td>Mackerel icefish.</td>
</tr>
<tr>
<td>Chionodraco rastrospinosus</td>
<td>Ocellated icefish.</td>
</tr>
<tr>
<td>Pseudochaenichthys georgianus</td>
<td>South Georgia icefish.</td>
</tr>
</tbody>
</table>

Antarctic marine living resources or AMLR(s) means:

(1) The populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence;

(2) All species of Dissostichus, wherever found; and

(3) All parts or products of those populations and species set forth in paragraphs (1) and (2) of this definition.

Commission means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

Convention waters means all waters south of the Antarctic Convergence.

Dealer means the person who first receives AMLRs from a harvesting vessel or transshipment vessel or who imports AMLRs into, or re-exports AMLRs from, the United States.

Directed fishing, with respect to any species or stock of fish, means any fishing that results in such fish comprising more than 1 percent by weight, at any time, of the catch on board the vessel.

Dissostichus catch document (DCD) means the uniquely numbered catch documentation form approved by the Commission and issued by a flag state to its vessels authorized to harvest Dissostichus species.
§ 300.102 Relationship to other treaties, conventions, laws, and regulations.

(a) Other conventions and treaties to which the United States is a party and other Federal statutes and implementing regulations may impose additional restrictions on the harvesting and importation into the United States of AMLRs.


§ 300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.

(a) General. (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP) Protected Site designated in accordance with the CCAMLR Conservation Measure describing the Procedures for According Protection for CEMP Sites.

(2) If a CEMP Protected Site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, when it enters into force), an applicant seeking to enter such a Protected Site must apply to the Director of the NSF for a permit under applicable provisions of the ACA or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must comply with the appropriate CEMP Protected Site Management Plan. In all other cases, an applicant seeking a permit to enter a CEMP Protected Site must apply to the Assistant Administrator for a CEMP permit in
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accordance with the provisions of this section.

(b) Responsibility of CEMP permit holders and persons designated as agents under a CEMP permit. (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under this subpart.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes. Holders of permits to enter CEMP Protected Sites are not permitted to undertake any activities within a CEMP Protected Site that are not in compliance with the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on the Environmental Protection to the Antarctic Treaty and its Annexes when it enters into force), as implemented under by the ACA and any superseding legislation. (Persons interested in conducting activities subject to the Antarctic Treaty or the Protocol should contact the Office of Polar Programs, NSF).


(d) Prohibitions on takings. Permits issued under this section do not authorize any takings as defined in the applicable statutes and implementing regulations governing the activities of persons in Antarctica.

(e) Issuance criteria. Permits designated in this section may be issued by the Assistant Administrator upon a determination that:

(1) The specific activities meet the requirements of the Act.

(2) There is sufficient reason, established in the permit application, that the scientific purpose for the intended entry cannot be served elsewhere.

(3) The actions permitted will not violate any provisions or prohibitions of the Protected Site’s Management Plan submitted in compliance with the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites.

(f) Application process. An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP Protected Site shall include the following in the application.

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the Protected Site’s Management Plan.

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the Protected Site’s Management Plan. Prospective applicants may obtain copies of the relevant Management Plans and the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites by requesting them from the Assistant Administrator.

(g) Conditions. CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) Duration. Permits issued under this section are valid for a period of 1 year. Applicants requesting a permit to reenter a Protected Site must include the report required by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

(i) Transfer. CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(j) Modification. (1) CEMP permits can be modified by submitting a request to the Assistant Administrator. Such requests shall specify:

(i) The action proposed to be taken along with a summary of the reasons therefore.
§ 300.104 Scientific research.

(a) The management measures issued pursuant to the procedures at §300.111 do not apply to catches of less than 5 tons taken by any vessel for research purposes, unless otherwise indicated.

(b) Catches taken by any vessel for research purposes will be considered as part of any catch limit.

(c) The catch reporting procedure identified in management measures issued pursuant to the procedures at §300.111 applies whenever the catch

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Int’l. Fishing and Related Activities

(ii) The steps that the permit holder may take to demonstrate or achieve compliance with all lawful requirements.

(2) If a requested modification is not in compliance with the terms of the Protected Site’s Management Plan, the Assistant Administrator will treat the requested modification as an application for a new CEMP permit and so notify the holder. Modifications will be acted upon within 30 days of receipt. The CEMP permit holder must report to the Assistant Administrator any change in previously submitted information within 10 days of the change.

(3) Additional conditions and restrictions. The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(k) Revocation or suspension. CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.

(1) A CEMP permit may be revoked or suspended based on a violation of the permit, the Act, or this subpart.

(2) Failure to report a change in the information submitted in a CEMP permit application within 10 days of the change is a violation of this subpart and voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(1) Exceptions. Entry into a Protected Site described in this section is lawful if committed under emergency conditions to prevent the loss of human life, compromise human safety, prevent the loss of vessels or aircraft, or to prevent environmental damage.

(m) Protected sites. (1) Sites protected by the Antarctic Treaty and regulated under the ACA are listed at 45 CFR part 670 subparts G and H.

(2) The following sites have been identified as CEMP Protected Sites subject to the regulatory authority of the Act:

(i) Seal Islands, South Shetland Islands—The Seal Islands are composed of islands and skerries located approximately 7 km north of the northwest corner of Elephant Island, South Shetland Islands. The Seal Islands CEMP Protected Site includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is situated at 60°59′14″ S. lat., 55°23′04″ W. long.

(ii) Cape Shirreff and the San Telmo Islands. This designation takes effect on May 1, 1995. Cape Shirreff is a low, ice-free peninsula towards the western end of the north coast of Livingston Island, South Shetland Islands, situated at 62°29′ S. lat., 60°47′ W. long., between Barclay Bay and Hero Bay. San Telmo Island is the largest of a small group of ice-free rock islets, approximately 2 km west of Cape Shirreff. The boundaries of the Cape Shirreff CEMP Protected Site are identical to the boundaries of the Site of Special Scientific Interest No. 32, as specified by ATCM Recommendation XV–7. No manmade boundary markers indicate the limits of the SSSI or protected site. The boundaries are defined by natural features and include the entire area of the Cape Shirreff peninsula north of the glacier ice tongue margin, and most of the San Telmo Island group. For the purposes of the protected site, the entire area of Cape Shirreff and the San Telmo Island group is defined as any land or rocks exposed at mean low tide within the area delimited by the map of SSSI No. 32 and available from the Assistant Administrator.

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Scientific research.

(a) The management measures issued pursuant to the procedures at §300.111 do not apply to catches of less than 5 tons taken by any vessel for research purposes, unless otherwise indicated.

(b) Catches taken by any vessel for research purposes will be considered as part of any catch limit.

(c) The catch reporting procedure identified in management measures issued pursuant to the procedures at §300.111 applies whenever the catch
§ 300.105  Initiating a new fishery.

(a) A new fishery, for purposes of this section, is a fishery on a species using a particular method in a statistical subarea for which:

1. Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing has not been submitted to CCAMLR;

2. Catch and effort data have never been submitted to CCAMLR; or

3. Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

(b) An individual subject to these regulations intending to develop a new fishery shall notify the Assistant Administrator no later than July 1 of the year in which he or she intends to initiate the fishery and shall not initiate the fishery pending CCAMLR review.

(c) The notification shall be accompanied by information on:

1. The nature of the proposed fishery, including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery.

2. Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity.

3. Details of dependent and associated species and the likelihood of them being affected by the proposed fishery.

4. Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield.

§ 300.106  Exploratory fisheries.

(a) An exploratory fishery, for purposes of this section, is a fishery that was previously defined as a new fishery under §300.105.

(b) A fishery will continue to be classified as an exploratory fishery until sufficient information is available to:

1. Evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery’s potential yield.
§ 300.107 Reporting and recordkeeping requirements.

(a) Vessels. The operator of any vessel required to have a permit under this subpart must:

(1) Accurately maintain on board the vessel a fishing logbook and all other reports and records required by its permit;

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector; and

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(b) Dealers. Dealers of AMLRs required to have a permit under this subpart must:

(1) Accurately maintain all reports and records required by their permit;

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector; and

(3) Transshipment vessels. (i) The master of the harvesting vessel must:

(A) electronically convey by the most rapid means possible each copy of the original DCD to NMFS; and provide a copy to each recipient of the catch.

(B) Sign the DCD (or copies thereof) and, electronically convey by the most rapid means possible each copy to NMFS, and provide a copy to each recipient of the catch.

(iii) The master of the harvesting vessel must submit the original DCD (or copies thereof with original signatures) to NMFS no later than 30 days after the end of the fishing season as authorized for that vessel on its harvesting permit.

(2) Harvesting vessels. (i) In addition to any harvesting permit or authorization previously issued, a U.S. vessel harvesting or attempting to harvest Dissostichus species must possess a DCD issued by NMFS which is non-transferrable. The master of the harvesting vessel must ensure that the catch information specified on the DCD is accurately recorded.

(ii) Prior to offloading of Dissostichus species, the master of the harvesting vessel must:

(A) electronically convey by the most rapid means possible catch information to NMFS and record on the DCD a confirmation number received from NMFS;

(B) Obtain on the DCD (or copies thereof) the signature(s) of the following persons: if catch is offloaded for transshipment, the master of the vessel(s) to which the catch is transferred; or if catch is offloaded for landing, the signature of both the responsible official(s) designated by NMFS in the harvesting permit, and the dealer(s) that receives the catch at the port(s) of landing; and

(C) Sign the DCD (or copies thereof), electronically convey by the most rapid means possible each copy to NMFS, and provide a copy to each recipient of the catch.

(ii) Each vessel participating in an exploratory fishery must carry a scientific observer.

(d) The operator of any vessel engaging in an exploratory fishery must submit, by the date specified in the operator's harvesting permit, catch, effort, and related biological, ecological, and environmental data as required by a data collection plan for the fishery formulated by the CCAMLR Scientific Committee.

(e) In addition to the requirements in §300.112, any individual planning to enter an exploratory fishery must notify the Assistant Administrator no later than 4 months in advance of the annual meeting of CCAMLR. The Assistant Administrator will not issue a permit to enter an exploratory fishery until after the requirements of §300.112 have been met and the meeting of CCAMLR, which receives and considers the notice made to the Assistant Administrator, has been concluded.
§ 300.108 Vessel and gear identification.

(a) Vessel identification. (1) The operator of each harvesting vessel 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 or inspection vessel, and on an appropriate weather deck so that it is visible from the air.

(2) The operator of each harvesting vessel 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 specific for the non-assigned vessel.

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

(b) Navigational lights and shapes. Each harvesting vessel 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 harvesting vessel is engaged (as described at 33 CFR part 81).

(c) Gear identification. (1) The operator of each harvesting vessel must ensure that all deployed fishing gear that

(iii) The original validated Dissostichus re-export document and copies of the original DCD(s) must accompany the export shipment.

(iv) The dealer must retain a copy of the re-export document and copies of the DCD(s) at his/her place of business for a period of 2 years from the date on the DCD.

(7) Exception. Dissostichus species harvested prior to the effective date of this rule may be imported during the first 60 days following the effective date of this rule, provided that the date of the harvest(s) are corroborated on the dealer permit.

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is not physically and continuously attached to a harvesting vessel is clearly marked at the surface with a buoy displaying the vessel identification of the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for 2 miles at night in good visibility, and a radio buoy. Trawl codends passed from one vessel to another are considered continuously attached gear and do not have to be marked.

(2) The operator of each harvesting vessel must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs (see paragraph (a) of this section), a light visible for 2 miles at night in good visibility, and a radio buoy.

(3) 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 or CCAMLR inspector.

(d) Maintenance. The operator of each harvesting vessel must:

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

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

(3) Ensure that the proper navigational lights and shapes are displayed for the harvesting vessel’s activity and are properly functioning.

§ 300.110 Gear disposal.

(a) The operator of a harvesting vessel 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 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 a harvesting vessel’s gear.

(b) The operator of a harvesting vessel may not abandon fishing gear in Convention waters.

(c) The operator of a harvesting vessel must provide a copy of the CCAMLR information brochure “Marine Debris—A Potential Threat to Antarctic Marine Mammals” to each member of the crew of the harvesting vessel and must display copies of the CCAMLR placard “Avoidance of Incidental Mortality of Antarctic Marine Mammals” in the wheelhouse and crew quarters of the harvesting vessels. Copies of the brochure and placard will be provided to each holder of a harvesting permit by NMFS when issuing the permit.

§ 300.110 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) Notothenia rossii and Dissostichus eleginoides—120 mm.

(2) Champsocephalus gunnari—90 mm.

(3) Gobionotothen gibberifrons, Notothenia kempi and Lepidorhirus squamifrons—80 mm.

(b) Any means or device that would reduce the size or obstruct the opening of the meshes is prohibited.

(c) The following procedure will be used for determining compliance with mesh size requirements.

(1) Description of gauges. (i) Gauges for determining mesh sizes will be 2 mm thick, flat, of durable material and capable of retaining their shape. They may have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They will have a hole at the narrowest extremity.

(ii) Each gauge will be inscribed on its face with the width in millimeters both on the parallel-sided section, if any, and on the tapering section. In the case of the latter, the width will be inscribed every 1 mm interval, but the
§ 300.111 Framework for annual management measures.

(a) Introduction. New management measures may be added and others modified through publication of a regulatory action in the Federal Register. The following framework process authorizes the implementation of measures that may affect the operation of the commercial or exploratory fisheries, gear, area restrictions, or changes in catch and/or effort.

(b) Preliminary notice. The Secretary of State shall publish preliminary notice in the Federal Register of the management measures adopted by the parties to the Convention.
§ 300.112 Harvesting permits.

(a) General. (1) Every vessel subject to the jurisdiction of the United States that attempts to reduce or reduces any AMLR to possession must have a harvesting permit authorizing the attempt or reduction, unless the attempt or reduction occurs during recreational fishing or is covered by an individual permit. Boats launched from a vessel issued a harvesting permit do not require a separate permit, but are covered by the permit issued the launching vessel. Any enforcement action that results from the activities of a launched boat will be taken against the launching vessel.

(2) Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to harass, capture, harm, kill, harvest, or import marine mammals. No marine mammals may be taken in the course of commercial fishing operations unless the taking is allowed under the Marine Mammal Protection Act and/or the Endangered Species Act pursuant to an exemption or permit granted by the appropriate agency.

(b) Responsibility of owners and operators. (1) The owners and operators of each harvesting vessel are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under the Act and this subpart.

(2) The owners and operators of each such vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the owners or operators, and regardless of knowledge concerning their occurrence.

(3) The owner of such vessel must report any sale, change in ownership, or other disposition of the vessel to the Assistant Administrator within 15 days of the occurrence.

(c) Application. Application forms for harvesting permits are available from the Assistant Administrator (Attn: CCAMLR permits). A separate fully completed and accurate application must be submitted for each vessel for which a harvesting permit is requested at least 90 days before the date anticipated for the beginning of harvesting.

(d) Issuance. The Assistant Administrator may issue a harvesting permit to a vessel if the Assistant Administrator determines that the harvesting described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those that ensure its stable recruitment. For this purpose, the Convention recommends that its size not be allowed to fall below a level close to that which ensures the greatest net annual increment.

(2) Upset the ecological relationships between harvested, dependent, and related populations of AMLRs and the restoration of depleted populations to levels that will ensure stable recruitment.

(3) Cause changes or increase the risk of changes in the marine ecosystem that are not potentially reversible over 2 or 3 decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien
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species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of AMLRs.

(4) Violate the management measures issued pursuant to §300.111 of this subpart.

(5) Violate any other conservation measures in force with respect to the United States under the Convention or the Act.

(e) Duration. A harvesting permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

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

(g) Display. Each harvesting vessel when engaged in harvesting must either have on board an up-to-date copy of its harvesting permit or a fully completed and up-to-date harvesting vessel certificate and the vessel operator must produce it for inspection upon the request of an authorized officer or CCAMLR inspector. In order for the certificate to be considered complete, the vessel owner or operator must enter on it the name and IRCS of the vessel issued the harvesting permit, the number of the harvesting permit and its date of issuance and expiration, the harvesting authorized by the permit, and all conditions and restrictions contained in the permit. Blank certificates are available from the Assistant Administrator.

(h) Changes in information submitted by permit applicants or holders—(1) Changes in pending applications. Applicants for a harvesting permit must report to the Assistant Administrator in writing any change in the information contained in the application. The processing period for the application will be extended as necessary to review the change.

(2) Changes occurring after permit issuance. (i) Changes other than in the manner and amount of harvesting. The owner or operator of a vessel that has been issued a harvesting permit must report to the Assistant Administrator in writing any change in previously submitted information other than a proposed change in the location, manner, or amount of harvesting within 15 days of the change. Based on such reported information, the Assistant Administrator may revise the permit effective upon notification to the permit holder.

(ii) Requested changes in the location, manner, or amount of harvesting. Any changes in the manner or amount of harvesting must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If a requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit and so notify the holder.

(1) Additional conditions and restrictions. The Assistant Administrator may revise the harvesting permit, effective upon notification to the permit holder, to impose additional conditions and restrictions on the harvesting vessel as necessary to achieve the purposes of the Convention or the Act. The permit holder must, as soon as possible, direct the vessel operator to revise the harvesting vessel certificate, if any, accordingly.

(j) Revision, suspension, or revocation for violations. A harvesting permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or this subpart. Failure to report a change in the information contained in an application within 15 days of the change is a violation of this subpart and voids the application or permit, as applicable. If a change in vessel ownership is not reported, the violation is chargeable to the previous owner. Title 15 CFR part 904 governs permit sanctions under this subpart.

(k) Transshipment vessels. Any U.S. flagged vessel that receives or attempts to receive Dissostichus species from a harvesting vessel at sea, regardless of whether such transshipment occurs in waters under the jurisdiction of CCAMLR, must obtain from NMFS a
§ 300.113 Dealer permits.

(a) General. (1) A dealer must obtain an AMLRs dealer permit from NMFS. Only those specific activities stipulated by the permit are authorized for the permit holder.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit or a harvesting permit issued under § 300.112 (a)(1) or its importation has been authorized by a NMFS-issued dealer permit issued under paragraph (a) of this section. AMLR’s may not be released for entry into the United States unless accompanied by the harvesting permit, the individual permit, a NMFS-issued dealer permit, or a copy thereof.

(3) In addition to any applicable catch documentation required under § 300.107 (c)(1), the dealer is required to complete and return to NMFS, no later than 24 hours after the date of the importation, an import ticket reporting the importation. In no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(b) Application. Application forms for AMLR dealer permits are available from NMFS. A complete and accurate application must be submitted for each permit at least 30 days before the anticipated date of the first receipt, importation, or re-export.

(c) Issuance. NMFS may issue a dealer permit if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this subpart.

(d) Duration. A permit issued under this section is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) Transfer. A permit issued under this section is not transferable or assignable.

(f) Changes in information—(1) Pending applications. Applicants for permits under this section must report in writing to NMFS any change in the information submitted in their permit applications. The processing period for the application will be extended as necessary to review and consider the change.

(2) Issued permits. Any entity issued a permit under this section must report in writing to NMFS any changes in previously submitted information. Any changes that would not result in a change in the receipt or importation authorized by the permit must be reported on the import ticket required to be submitted to NMFS no later than 24 hours after the date of receipt or importation. Any changes that would result in a change in the receipt or importation authorized by the permit, i.e., harvesting vessel or country of origin, type and quantity of the resource to be received or imported, and Convention statistical subarea from which the resource was harvested must be proposed in writing to NMFS and may not be undertaken unless authorized by NMFS through issuance of a revised or new permit.

(g) Revision, suspension, or revocation. A permit issued under this section may be revised, suspended, or revoked, based upon a violation of the permit, the Act, or this subpart. Failure to report a change in the information contained in a permit application voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

§ 300.114 Appointment of a designated representative.

(a) All holders of permits authorizing fishing in subarea 48.3 must appoint a designated representative in the United States.
§ 300.115 Prohibitions.

In addition to the prohibitions in §300.4, it is unlawful for any person to:

(a) Reduce to possession or attempt to reduce to possession any AMLRs without a permit for such activity as required by §300.112.

(b) Import into or export from the United States any AMLRs taken by vessels without a permit to harvest those resources as required by §300.112 (a)(1), or without applicable catch documentation as required by §300.107 (c)(1), or without a dealer permit as required by §300.113 (a)(1), or in violation of the terms and conditions for such import or export as specified on the permit.

(c) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention.

(d) Ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any AMLR that he or she knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any regulation promulgated under this subpart, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the AMLR.

(e) Refuse to allow any CCAMLR inspector to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for the purpose of conducting an inspection authorized by the Act, this subpart, or any permit issued under the Act.

(f) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to CCAMLR inspectors.

(g) Refuse to sign a written notification of alleged violations of Commission measures in effect prepared by a CCAMLR inspector.

(h) Assault, resist, oppose, impede, intimidate, or interfere with a CCAMLR inspector in the conduct of any boarding or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(i) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act.

(j) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this subpart.

(k) Fish in a closed area.

(l) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in management measures issued pursuant to §300.111.

(m) Use any means or device that would reduce the size or obstruct the opening of the trawl meshes specified in management measures issued pursuant to §300.111.

(n) Possess fish in violation of the catch limit specified in management measures issued pursuant to §300.111.

(o) Discard netting or other substances in the Convention Area in violation of §300.109.

(p) Violate or attempt to violate any provision of this subpart, the Act, any other regulation promulgated under the Act or any permit issued under the Act.

(q) Provide incomplete or inaccurate information about the harvest, transshipment, landing, import or re-export of applicable species on any document required under this subpart.

(r) Receive AMLRs from a vessel without a dealer or harvesting permit issued under this subpart.


§ 300.116 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of §300.5, the following requirements apply to this subpart.

(a) Access and records. (1) The owners and operator of each harvesting vessel
must provide authorized officers and CCAMLR inspectors 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. If inspection of a particular area would interfere with specific on-going scientific research, and if the operator of the harvesting vessel makes such assertion and produces an individual permit that covers that specific research, the authorized officer or CCAMLR inspector will not disturb the area, but will record the information pertaining to the denial of access.

(2) The owner and operator of each harvesting vessel must provide to authorized officers and CCAMLR inspectors all records and documents pertaining to the harvesting 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.

(3) Before leaving vessels that have been inspected, the CCAMLR inspector will give the master of the vessel a Certificate of Inspection and a written notification of any alleged violations of Commission measures in effect and will afford the master the opportunity to comment on it. The ship’s master must sign the notification to acknowledge receipt and the opportunity to comment on it.

(b) Reports by non-inspectors. All scientists, fishermen, and other non-inspectors present in the Convention area and subject to the jurisdiction of the United States are encouraged to report any violation of Commission conservation and management measures observed in the Convention area to the Office of Ocean Affairs (CCAMLR Violations), Department of State, Room 5801, Washington, DC 20520.

(c) Storage of AMLRs. The operator of each harvesting vessel storing AMLRs in a storage space on board the vessel must ensure that non-resource items are neither stowed beneath nor covered by resource items, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other moveable non-resource items. These non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.

(d) Disposition of resources denied entry. [Reserved]

§ 300.117 Penalties.

Any person or harvesting vessel found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR part 904, and other applicable laws.
FIGURE 1 TO SUBPART G—BOUNDARIES OF THE STATISTICAL REPORTING AREA IN THE SOUTHERN OCEAN
FIGURE 2 TO SUBPART G—THE USE OF STREAMER LINES TO MINIMIZE THE INCIDENTAL MORTALITY OF SEABIRDS IN THE COURSE OF LONGLINE FISHING OR LONGLINE FISHING RESEARCH OPERATIONS IN THE CONVENTION AREA

The use of streamer lines to minimize the incidental mortality of seabirds in the course of longline fishing or longline fishing research operations in the Convention Area.
§ 300.120  Purpose.

This subpart implements fishery conservation and management measures as provided in fishery agreements pursuant to the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (TIAS 10120) (Treaty).

§ 300.121  Definitions.

In addition to the terms defined in § 300.2, the Magnuson Act, and § 600.10 of this title, and in the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson Act, or the Treaty, the definition in this section shall apply.

Conch means Strombus gigas.

Factory vessel means a vessel that processes, transforms, or packages aquatic biological resources on board.

Lobster means one or both of the following:

(1) Smoothtail lobster, Panulirus laeviscauda.

(2) Spiny lobster, Panulirus argus.

Regional Administrator means the Director, Southeast Region, or a designee.

Science and Research Director means the Director, Southeast Fisheries Science Center.

Treaty waters means the waters of one or more of the following:

(1) Quita Sueno, enclosed by latitudes 13°55′N. and 14°43′N. between longitudes 80°55′W. and 81°28′W.

(2) Serrana, enclosed by arcs 12 nautical miles from the low water line of the cays and islands in the general area of 14°22′N. lat., 80°20′W. long.

(3) Roncador, enclosed by arcs 12 nautical miles from the low water line of Roncador Cay, in approximate position 13°35′N. lat., 80°05′W. long.

§ 300.122  Relation to other laws.

(a) The relation of this subpart to other laws is set forth in § 600.705 of this title and paragraph (b) of this section. Particular note should be made to the reference in § 600.705 to the applicability of title 46 U.S.C., under which a Certificate of Documentation is invalid when the vessel is placed under the command of a person who is not a citizen of the United States.

(b) Minimum size limitations for certain species, such as reef fish in the Gulf of Mexico, may apply to vessels transiting the EEZ with such species aboard.

§ 300.123  Certificates and permits.

(a) Applicability. An owner of a vessel of the United States that fishes in treaty waters is required to obtain an annual certificate issued by the Republic of Colombia and an annual vessel permit issued by the Regional Administrator.

(b) Application for certificate/permit. (1) An application for a permit must be submitted and signed by the vessel’s owner. An application may be submitted at any time, but should be submitted to the Regional Administrator not less than 90 days in advance of its need. Applications for the ensuing calendar year should be submitted to the Regional Administrator by October 1.

(2) An applicant must provide the following:

(i) A copy of the vessel’s valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(ii) Vessel name and official number.

(iii) Name, address, telephone number, and other identifying information of the vessel owner or, if the owner is a corporation or partnership, of the responsible corporate officer or general partner.

(iv) Principal port of landing of fish taken from treaty waters.

(v) Type of fishing to be conducted in treaty waters.

(vi) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(vii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.
§ 300.125 Vessel identification.

(a) Official number. A vessel with a permit issued pursuant to §300.123, when in treaty waters, 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 clearly visible from an enforcement vessel or aircraft. The official number must be permanently affixed to or painted on the vessel and must be in block arabic numerals in contrasting color to the background at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessel.

(b) Duties of operator. The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair.

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.
§ 300.126 Prohibitions.

In addition to the general prohibitions specified in §600.725 of this title and the prohibited acts specified in §300.4, it is unlawful for any person to do any of the following:

(a) Fish in treaty waters without the certificate and permit aboard, or fail to display the certificate and permit, as specified in §300.123(a) and (f).

(b) Fail to notify the Regional Administrator of a change in application information, as specified in §300.123(j).

(c) Fail to report a vessel's arrival in and departure from treaty waters, as required by §300.124(a).

(d) Falsify or fail to display and maintain vessel identification, as required by §300.125.

(e) Fail to comply immediately with instructions and signals issued by an enforcement officer of the Republic of Colombia, as specified in §300.127.

(f) Operate a factory vessel in treaty waters, as specified in §300.130(a).

(g) Use a monofilament gillnet in treaty waters, as specified in §300.130(b).

(h) Use autonomous or semi-autonomous diving equipment in treaty waters, as specified in §300.130(c).

(i) Use or possess in treaty waters a lobster trap or fish trap without a degradable panel, as specified in §300.130(d).

(j) Possess conch smaller than the minimum size limit, as specified in §300.131(a).

(k) Fish for or possess conch in the closed area or during the closed season, as specified in §300.131(b) and (c).

(l) Retain on board a berried lobster or strip eggs from or otherwise molest a berried lobster, as specified in §300.132(a).

(m) Possess a lobster smaller than the minimum size, as specified in §300.132(b).

(n) Fail to return immediately to the water unharmed a berried or undersized lobster, as specified in §300.132(a) and (b).

§ 300.127 Facilitation of enforcement.

(a) The provisions of §600.730 of this title and paragraph (b) of this section apply to vessels of the United States fishing in treaty waters.

(b) The operator of, or any other person aboard, any vessel of the United States fishing in treaty waters must immediately comply with instructions and signals issued by an enforcement officer of the Republic of Colombia to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing this subpart.

§ 300.128 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson Act or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to part 600 of this title, to 15 CFR part 904, and to other applicable law. In addition, Colombian authorities may require a vessel involved in a violation of this subpart to leave treaty waters.

§ 300.129 Fishing year.

The fishing year for fishing in treaty waters begins on January 1 and ends on December 31.

§ 300.130 Vessel and gear restrictions.

(a) Factory vessels. Factory vessels are prohibited from operating in treaty waters.

(b) Monofilament gillnets. A monofilament gillnet made from nylon or similar synthetic material are prohibited from being used in treaty waters.

(c) Tanks and air hoses. Autonomous or semiautonomous diving equipment (tanks or air hoses) are prohibited from being used to take aquatic biological resources in treaty waters.

(d) Trap requirements. A lobster trap or fish trap used or possessed in treaty waters that is constructed of material other than wood must have an escape panel located in the upper half of the sides or on top of the trap that, when removed, will leave an opening no smaller than the throat or entrance of the trap. Such escape panel must be constructed of or attached to the trap with wood, cotton, or other degradable material.

(e) Poisons and explosives. [Reserved]
§ 300.131 Conch harvest limitations.

(a) Size limit. The minimum size limit for possession of conch in or from treaty waters is 7.94 oz (225 g) for an uncleaned meat and 3.53 oz (100 g) for a cleaned meat.

(b) Closed area. The treaty waters of Quita Sueno are closed to the harvest or possession of conch.

(c) Closed season. During the period July 1 through September 30 of each year, the treaty waters of Serrana and Roncador are closed to the harvest or possession of conch.

§ 300.132 Lobster harvest limitations.

(a) Berried lobsters. A berried (egg-bearing) lobster in treaty waters may not be retained on board. A berried lobster must be returned immediately to the water unharmed. A berried lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested to remove the eggs.

(b) Size limit. The minimum size limit for possession of lobster in or from treaty waters is 5.5 inches (13.97 cm), tail length. Tail length means the measurement, with the tail in a straight, flat position, from the anterior upper edge of the first abdominal (tail) segment to the tip of the closed tail. A lobster smaller than the minimum size limit must be returned immediately to the water unharmed.

Subpart I—United States-Canada Fisheries Enforcement

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

§ 300.140 Purpose and scope.

This subpart implements the Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement executed at Ottawa, Canada, on September 26, 1990 (Agreement), allowing each party to the Agreement to take appropriate measures, consistent with international law, to prevent its nationals, residents and vessels from violating those national fisheries laws and regulations of the other party. This subpart applies, except where otherwise specified in this subpart, to all persons and all places (on water and on land) subject to the jurisdiction of the United States under the Magnuson Act. This includes, but is not limited to, activities of nationals, residents and vessels of the United States (including the owners and operators of such vessels) within waters subject to the fisheries jurisdiction of Canada as defined in this subpart, as well as on the high seas and in waters subject to the fisheries jurisdiction of the United States.

§ 300.141 Definitions.

In addition to the terms defined in §300.2 and those in the Magnuson Act and the Agreement, the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, the Magnuson Act, or the Agreement, the definition in this section applies.

Applicable Canadian fisheries law means any Canadian law, regulation or similar provision relating in any manner to fishing by any fishing vessel other than a Canadian fishing vessel in waters subject to the fisheries jurisdiction of Canada, including, but not limited to, any provision relating to stowage of fishing gear by vessels passing through such waters, and to obstruction or interference with enforcement of any such law or regulation.

Authorized officer of Canada means any fishery officer, protection officer, officer of the Royal Canadian Mounted Police, or other employee authorized by the appropriate authority of any national or provincial agency of Canada to enforce any applicable Canadian fisheries law.

Canadian fishing vessel means a fishing vessel:

(1) That is registered or licensed in Canada under the Canada Shipping Act and is owned by one or more persons each of whom is a Canadian citizen, a person resident and domiciled in Canada, or a corporation incorporated under the laws of Canada or of a province, having its principal place of business in Canada; or

(2) That is not required by the Canada Shipping Act to be registered or licensed in Canada and is not registered or licensed elsewhere but is owned as described in paragraph (1) of this definition.
§ 300.142 Prohibitions.

The prohibitions in this section apply within waters subject to the fisheries jurisdiction of Canada and during hot pursuit therefrom by an authorized officer of Canada. It is unlawful for any national or resident of the United States, or any person on board a vessel of the United States, or the owner or operator of any such vessel, to do any of the following:

(a) Engage in fishing in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(b) Take or retain fish in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(c) Be on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, without stowing all fishing gear on board either:

(1) Below deck, or in an area where it is not normally used, such that the gear is not readily available for fishing; or

(2) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; unless the vessel has been authorized by the Government of Canada to fish in the particular location within waters subject to the fisheries jurisdiction of Canada in which it is operating.

(d) While on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, fail to respond to any inquiry from an authorized officer of Canada regarding the vessel’s name, flag state, location, route or destination, and/or the circumstances under which the vessel entered such waters.

(e) Violate the Agreement, any applicable Canadian fisheries law, or the terms or conditions of any permit, license or any other authorization granted by Canada under any such law.

(f) Fail to comply immediately with any of the enforcement and boarding procedures specified in §300.143.

(g) Destroy, stave, or dispose of in any manner, any fish, gear, cargo or other matter, upon any communication or signal from an authorized officer of Canada, or upon the approach of such an officer, enforcement vessel or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(h) Refuse to allow an authorized officer of Canada to board a vessel for the purpose of conducting any inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(i) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer of Canada in the conduct of any boarding, inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(j) Make any false statement, oral or written, to an authorized officer of Canada in response to any inquiry by that officer in connection with enforcement of any applicable Canadian fisheries law.

(k) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this subpart such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(l) Attempt to do any of the foregoing.

§ 300.143 Facilitation of enforcement.

(a) General. Persons aboard fishing vessels subject to this subpart must immediately comply with instructions and/or signals issued by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft, to stop the vessel, and with instructions to facilitate safe boarding and inspection for the purpose of enforcing any applicable Canadian fisheries law, the Agreement, or this subpart. All of
the provisions of §300.5 regarding communications, boarding, and signals apply to this subpart. For purposes of this subpart, authorized officer in §305 means an authorized officer of the United States or Canada. (See paragraph (b) of this section for specific requirements for complying with signals and instructions issued by an authorized officer of Canada.)

(b) Canadian signals. In addition to signals set forth in §300.5, persons aboard fishing vessels subject to this subpart must immediately comply with the following signals by an authorized officer of Canada.

(1) Authorized officers of Canada use the following signals to require fishing vessels to stop or heave to:
   (i) The hoisting of a rectangular flag, known as the International Code Flag "L", which is divided vertically and horizontally into quarters and colored so that:
       (A) The upper quarter next to the staff and the lower quarter next to the fly are yellow; and
       (B) The lower quarter next to the staff and the upper quarter next to the fly are black;
   (ii) The flashing of a light to indicate the International Morse Code letter "L", consisting of one short flash, followed by one long flash, followed by two short flashes (.-.-.); or
   (iii) The sounding of a horn or whistle to indicate the International Morse Code letter "L", consisting of one short blast, followed by one long blast, followed by two short blasts (.-.-.).

(2) Authorized officers of Canada use the following signals to require a fishing vessel to prepare to be boarded:
   (i) The hoisting of flags representing the International Code Flag "SQ3";
   (ii) The flashing of a light, or the sounding of a horn or whistle, to indicate the International Morse Code Signal "SQ3" (.--- .- .-.-.-.-).

§ 300.144 Penalties and sanctions.

Any person, any fishing vessel, or the owner or operator of any such vessel, who violates any provision of the Agreement or this subpart, is subject to the civil and criminal fines, penalties, forfeitures, permit sanctions, or other sanctions provided in the Magnuson Act, part 600 of this title, 15 CFR part 904 (Civil Procedures), and any other applicable law or regulation.

Subpart J—U.S. Nationals Fishing in Russian Fisheries

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

§ 300.150 Purpose.


§ 300.151 Definitions.

In addition to the terms defined in §300.2 and those in the Magnuson Act, the terms used in this subpart have the following meanings. If a term is defined differently in §300.2 or the Magnuson Act, the definition in this section shall apply.

Affiliates means two persons (including individuals and entities) related in such a way that—
   (1) One indirectly or directly controls or has power to control the other; or
   (2) A third party controls or has power to control both. Indicia 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 reorganized entity having the same or similar management, ownership, or employees as a former entity.


Embassy of the Russian Federation means the Fisheries Attaché of the embassy located in Washington, D.C.

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 that does, is intended to, or can reasonably be expected to result in catching
§ 300.152 Procedures.

(a) Application for annual permits. U.S. vessel owners and operators must have a valid permit issued by the Russian Federation obtained pursuant to a complete application submitted through NMFS before fishing in the Russian EZ or for Russian fishery resources. Application forms and copies of applicable laws and regulations of the Russian Federation may be obtained from NMFS Headquarters.

(b) Other application information. Applications for motherships, processing or transport vessels must identify the type of fishing gear to be employed or the fishing quotas if the vessel has received or is requesting a quota. To facilitate processing, NMFS requests that permit applications for more than 10 vessels be grouped by type and fishing area, and provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.
§ 300.154 Recordkeeping and reporting.

(a) General. The owner and operator of a vessel subject to this subpart are responsible for complying with all recordkeeping and reporting requirements in this part in a timely and accurate manner. Reports and records required by this subpart must be in English, in the formats specified, and unless otherwise specified, based on Greenwich mean time (GMT).

(b) Vessel permit abstract report. (1) The owner and operator of a vessel subject to this subpart must submit to NMFS Headquarters a permit abstract
§ 300.155 Requirements.

(a) Compliance with permit requirements. (1) U.S. nationals and vessels subject to this subpart must have a valid permit, as specified in §300.153(c) in order to fish for Russian fishery resources.

(2) U.S. nationals and vessels subject to this subpart that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) Compliance with Russian law. U.S. nationals and vessels fishing for Russian fishery resources must comply with the relevant laws and regulations of the Russian Federation.

(c) Protection of marine mammals. U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 et seq, also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel

the sender’s name and telephone number, and FAX, TELEX, and COMSAT numbers; the date (month and day) and time (hour and minute GMT) that the report is submitted to NMFS; and the intended date and U.S. port of landing. A list of species and product codes may be obtained from the Regional Administrator.

(d) Recordkeeping. The owner and operator of a vessel subject to this subpart must retain all copies of all reports required by this subpart on board the vessel for 1 year after the end of the calendar year in which the report was generated. The owner and operator must retain and make such records available for inspection upon the request of an authorized officer at any time for 3 years after the end of the calendar year in which the report was generated, whether or not such records on board the vessel.

§ 300.155 Requirements.

(a) Compliance with permit requirements. (1) U.S. nationals and vessels subject to this subpart must have a valid permit, as specified in §300.153(c) in order to fish for Russian fishery resources.

(2) U.S. nationals and vessels subject to this subpart that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) Compliance with Russian law. U.S. nationals and vessels fishing for Russian fishery resources must comply with the relevant laws and regulations of the Russian Federation.

(c) Protection of marine mammals. U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 et seq, also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel
§ 300.156 Prohibited acts.

In addition to the prohibited acts specified at § 300.4, it shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fishery resources without a valid permit issued by the competent authorities of the Russian Federation.

(b) To violate the provisions, conditions, and restrictions of an applicable permit.

(c) To violate the relevant laws and regulations of Russia.

(d) To harass, hunt, capture, or kill any marine mammal within the Russian EZ, or while fishing for Russian fishery resources, except as provided in § 300.155 (c).

(e) To fail to comply immediately with enforcement and boarding procedures specified in § 300.155 (d).

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this subpart for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation.

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation.

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation.

(i) To refuse or fail to allow a Russian observer to board a vessel subject to this subpart while fishing in the Russian EZ, or for Russian fishery resources.

(j) To fail to provide to a Russian observer aboard a vessel fishing in the Russian EZ or for Russian fishery resources, the courtesies and accommodations provided to ship’s officers.

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this subpart.
§ 300.157 Penalties.

In addition to any fine, penalty, or forfeitue imposed by the Russian Federation, nationals and vessels of the United States violating the prohibitions of §300.156 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson Act, 16 U.S.C. 1858, 1860, 1861, and any other applicable laws and regulations of the United States.

Subpart K—Transportation and Labeling of Fish or Wildlife


§ 300.160 Requirement for marking of containers or packages.

Except as otherwise provided in this subpart, all persons are prohibited from importing, exporting, or transporting in interstate commerce any container or package containing any fish or wildlife (including shellfish) unless each container or package is conspicuously marked on the outside with both the name and address of the shipper and consignee and an accurate list of its contents by species and number of each species.

§ 300.161 Alternatives and exceptions.

(a) The requirements of §300.160 may be met by complying with one of the following alternatives to the marking requirement:

(1)(i) Conspicuously marking the outside of each container or package containing fish or wildlife with the word “fish” or “wildlife” as appropriate for its contents, or with the common name of its contents by species, and (ii) Including an invoice, packing list, bill of lading, or similar document to accompany the shipment that accurately states the name and address of the shipper and consignee, states the total number of packages or containers in the shipment, and for each species in the shipment specifies: The common name that identifies the species (examples include: chinook (or king) salmon; bluefin tuna; and whitetail deer); and the number of that species (or other appropriate measure of quantity such as gross or net weight). The invoice, packing list, bill of lading, or equivalent document must be securely attached to the outside of one container or package in the shipment or otherwise physically accompany the shipment in a manner that makes it readily accessible for inspection; or

(2) Affixing the shipper’s wildlife import/export license number preceded by “FWS” on the outside of each container or package containing fish or wildlife if the shipper has a valid wildlife import/export license issued under authority of part 14 of this title. For each shipment marked in accordance with this paragraph (a)(2), the records maintained under §14.93(d) of this title must include a copy of the invoice, packing list, bill of lading, or other
similar document that accurately states the information required by paragraph (a)(1)(ii) of this section.

(3) In the case of subcontainers or packages within a larger packing container, only the outermost container must be marked in accordance with this section, provided, that for live fish or wildlife that are packed in subcontainers within a larger packing container, if the subcontainers are numbered or labeled, the packing list, invoice, bill of lading, or other similar document, must reflect that number or label.

(4) A conveyance (truck, plane, boat, etc.) is not considered a container for purposes of requiring specific marking of the conveyance itself, provided that:

(i) The fish or wildlife within the conveyance is carried loosely or is readily identifiable, and is accompanied by the document required by paragraph (a)(1)(ii) of this section; or

(ii) The fish or wildlife is otherwise packaged and marked in accordance with this subpart.

(b) The requirements of §300.160 of chapter III of this title do not apply to containers or packages containing—

(1) Fox, nutria, rabbit, mink, chinchilla, marten, fisher, muskrat, and karakul that have been bred and born in captivity, or their products, if a signed statement certifying that the animals were bred and born in captivity accompanies the shipping documents;

(2) Fish or shellfish contained in retail consumer packages labeled pursuant to the Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.; or

(3) Fish or shellfish that are landed by, and offloaded from, a fishing vessel (whether or not the catch has been carried by the fishing vessel interstate), as long as the fish or shellfish remain at the place where first offloaded.
CHAPTER IV—JOINT REGULATIONS (UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR AND NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE); ENDANGERED SPECIES COMMITTEE REGULATIONS

SUBCHAPTER A

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SUBCHAPTER B [RESERVED]

SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

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§ 401.1 Administration.

The Director of the U.S. Fish and Wildlife Service and the Director of the National Marine Fisheries Service shall jointly administer the Anadromous Fish Conservation Act for the Secretaries.

§ 401.2 Definitions.

As used in this part, terms shall have the meanings ascribed in this section.

(a) Secretary. The Secretary of Commerce, the Secretary of the Interior, or their authorized representatives.


(c) Eligible states. Any coastal State of the United States, the State of Vermont, and the States bordering the Great Lakes. The area within the Columbia River basin is excluded.

(d) State fishery agency. Any department(s), division(s), commis- sion(s), or official(s) of a State empowered under its laws to regulate a commercial or sport fishery.

(e) Non-Federal interest. Any organization, association, institution, business, school, individual, or group of individuals, municipality and others outside the Federal Government, in addition to State fishery agencies, which desire to cooperate within the terms of the Act.

(f) Cooperator. One or more States acting jointly or severally or other non-Federal interests, participating in a project agreement or grant-in-aid award with the Secretary.

(g) Anadromous fish. Aquatic, gill breathing, vertebrate animals bearing paired fins which migrate to and spawn in fresh water, but which spend part of their life in an oceanic environment; also fish in the Great Lakes that ascend streams to spawn.

(h) Application for Federal assistance. A description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(i) Project agreement. The formal document executed between the Secretary of the Interior and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

(j) Grant-in-Aid award. The formal document executed between the Secretary of Commerce and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

§ 401.3 Submission of documents.

Applications for Federal assistance and other documents for projects relating generally to recreational fisheries shall be submitted to the concerned Regional Office of the U.S. Fish and Wildlife Service, or for projects relating generally to commercial fisheries of the concerned Regional Office of the National Marine Fisheries Service.
§ 401.4 Activities prohibited.

Law enforcement, public relations, harvesting, marketing and processing activities, construction of fisherman use facilities, and activities concerned with landlocked anadromous fish populations (except fish in the Great Lakes that ascend streams to spawn) may not be financed under the Act.

§ 401.5 Coordination with States.

The Secretary will approve an Application For Federal Assistance only after he has coordinated the application with the State office established to review applications under Executive Order 12372 (if the State has established such an office and wishes to review these applications) and other non-Federal entities which have management authority over the resource to be affected.

[48 FR 29137, June 24, 1983]

§ 401.6 Prosecution of work.

(a) Project work shall be carried through to a state of completion acceptable to the Secretary with reasonable promptness. Failure to render satisfactory performance reports or failure to complete the project to the satisfaction of the Secretary shall be cause for suspension of Federal assistance for the project until the project provisions are satisfactorily met. Federal assistance may be terminated upon determination by the Secretary that satisfactory progress has not been maintained. The Secretary shall have the right to inspect and review work at any time.

(b) Research and development work shall be continuously coordinated by the Cooperators with studies conducted by others to avoid unnecessary duplication.

(c) All work shall be performed in accordance with applicable local laws, except when in conflict with Federal laws or regulations, in which case Federal laws or regulations shall prevail.

§ 401.7 General information for the Secretary.

Before any Federal funds may be obligated for any project an applicant shall furnish to the Secretary, upon his request, information regarding the laws affecting anadromous fish and the authority of the applicant to participate in the benefits of the Act.

(a) Document signature. Individuals authorized to sign project documents under the Commercial Fisheries Research and Development Act of 1964 (78 Stat. 197, as amended), 16 U.S.C. 779 through 779f, or the Federal Aid in Sport Fish Restoration Act (64 Stat. 430, as amended), 16 U.S.C. 777 through 777f, may likewise sign project documents contemplated in this part.

(b) Program information. The Secretary may, from time to time, request, and the Cooperators shall furnish, information relating to the administration and maintenance of any project established under the Act.

§ 401.8 Availability of funds.

The period of availability of funds to the States or other non-Federal interests for obligation shall be established by the administering Federal agency.

§ 401.9 Payments to cooperators.

Payments shall be made to Cooperators in accordance with provisions of grant-in-aid awards or project agreements.

§ 401.10 Request for payment.

Request for payment shall be on forms provided by the Secretary, certified as therein prescribed, and submitted to the Regional Director by the Cooperator.

§ 401.11 Property as matching funds.

The non-Federal share of the cost of projects may be in the form of real or personal property. Specific procedures to be used by grantees in placing the value on real or personal property for matching funds are set forth in Attachment F of Federal Management Circular 74-7.

§ 401.12 Ownership of property.

When real property is acquired pursuant to the provisions of the Act, title to such property, or interests therein, shall be vested in the United States, and the conveying instrument shall recite the United States of America as the grantee. However, if the Secretary determines that under the terms of the application for Federal assistance and
§ 401.21 Patents and inventions.

Determination of the patent rights in any inventions or discoveries resulting from work under project agreements entered into pursuant to the Act shall be consistent with the “Government Patent Policy” (President’s memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

§ 401.18 Contracts.

A Cooperator may use its own regulations or guidelines in obtaining services by contract or otherwise, provided that they adhere to applicable Federal laws, regulations, policies, guidelines, and requirements, as set forth in Attachment 0 of Federal Management Circular 74-7. However, the Cooperator is the responsible authority, without recourse to the Federal agency, regarding the settlement of such contractual issues.

§ 401.19 Statements and payrolls.

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR part 3), made pursuant to the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as amended, are made a part of the regulations in this part by reference. The Cooperator will comply with the regulations in this part and any amendments or modifications thereof, and the Cooperator’s prime contractor will be responsible for the submission of statements required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitation, variations, tolerances, and exemptions.

§ 401.20 Officials not to benefit.

No Member of, or Delegate to, Congress, or resident Commissioner, shall be admitted to any share or any part of any project agreement made under the Act, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

§ 401.21 Patents and inventions.

Determination of the patent rights in any inventions or discoveries resulting from work under project agreements entered into pursuant to the Act shall be consistent with the “Government Patent Policy” (President’s memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).
§ 401.22 Civil rights.

Each application for Federal assistance, grant-in-aid award, or project agreement shall be supported by a statement of assurances executed by the Cooperator providing that the project will be carried out in accordance with title VI, Nondiscrimination in federally Assisted Programs of the Civil Rights Act of 1964 and with the Secretary’s regulations promulgated thereunder.

§ 401.23 Audits.

The State is required to conduct an audit at least every two years in accordance with the provisions of Attachment P OMB Circular A–102. Failure to conduct audits as required may result in withholding of grant payments or such other sanctions as the Secretary may deem appropriate.

[49 FR 30074, July 26, 1984]

PART 402—INTERAGENCY CO-OPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

Subpart A—General

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AUTHORITY: 16 U.S.C. 1531 et seq.

SOURCE: 51 FR 19957, June 3, 1986, unless otherwise noted.
listed species or critical habitat. Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in §404.02. Section 7(d) of the Act prohibits Federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Section 7(e)–(o)(1) of the Act provide procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR part 451, and regulations governing the exemption process are found at 50 CFR parts 450, 452, and 453.

(b) The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12 and the designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall contact the NMFS. For all other listed species the Federal Agency shall contact the FWS.

§ 402.02 Definitions.


Action means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to:
(a) actions intended to conserve listed species or their habitat;
(b) the promulgation of regulations;
(c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or
(d) actions directly or indirectly causing modifications to the land, water, or air.

Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

Applicant refers to any person, as defined in section 3(13) of the Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

Biological assessment refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

Biological opinion is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Conference is a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.

Conservation recommendations are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.

Critical habitat refers to an area designated as critical habitat listed in 50 CFR parts 17 or 226.

Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

Designated non-Federal representative refers to a person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.

Destruction or adverse modification means a direct or indirect alteration
that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Director refers to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his authorized representative; or the Fish and Wildlife Service regional director, or his authorized representative, for the region where the action would be carried out.

Early consultation is a process requested by a Federal agency on behalf of a prospective applicant under section 7(a)(3) of the Act.

Effects of the action refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

Formal consultation is a process between the Service and the Federal agency that commences with the Federal agency’s written request for consultation under section 7(a)(2) of the Act and concludes with the Service’s issuance of the biological opinion under section 7(b)(3) of the Act.

Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

Jeopardize the continued existence of means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Listed species means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11–17.12.

Major construction activity is a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [NEPA, 42 U.S.C. 4332(2)(C)].

Preliminary biological opinion refers to an opinion issued as a result of early consultation.

Proposed critical habitat means habitat proposed in the FEDERAL REGISTER to be designated or revised as critical habitat under section 4 of the Act for any listed or proposed species.

Proposed species means any species of fish, wildlife, or plant that is proposed in the FEDERAL REGISTER to be listed under section 4 of the Act.

Reasonable and prudent alternatives refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

Reasonable and prudent measures refer to those actions the Director believes
necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take.

Recovery means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

Service means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

§ 402.03 Applicability.

Section 7 and the requirements of this part apply to all actions in which there is discretionary Federal involvement or control.

§ 402.04 Counterpart regulations.

The consultation procedures set forth in this part may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service. Such counterpart regulations shall be published in the Federal Register in proposed form and shall be subject to public comment for at least 60 days before final rules are published.

§ 402.05 Emergencies.

(a) Where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.

(b) Formal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The Service will evaluate such information and issue a biological opinion including the information and recommendations given during the emergency consultation.

§ 402.06 Coordination with other environmental reviews.

(a) Consultation, conference, and biological assessment procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq., implemented at 40 CFR Parts 1500–1508) or the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 et seq.). Satisfying the requirements of these other statutes, however, does not in itself relieve a Federal agency of its obligations to comply with the procedures set forth in this part or the substantive requirements of section 7. The Service will attempt to provide a coordinated review and analysis of all environmental requirements.

(b) Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA or FWCA, the results should be included in the documents required by those statutes.

§ 402.07 Designation of lead agency.

When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency.

§ 402.08 Designation of non-Federal representative.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Director of such designation. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and Federal agency must agree on the choice of the designated non-Federal representative. If a biological assessment is prepared by the designated
non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment. The ultimate responsibility for compliance with section 7 remains with the Federal agency.

§ 402.09 Irreversible or irretrievable commitment of resources.

After initiation or reinitiation of consultation required under section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied. This provision does not apply to the conference requirement for proposed species or proposed critical habitat under section 7(a)(4) of the Act.

Subpart B—Consultation Procedures

§ 402.10 Conference on proposed species or proposed critical habitat.

(a) Each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.

(b) The Federal agency shall initiate the conference with the Director. The Service may request a conference if, after a review of available information, it determines that a conference is required for a particular action.

(c) A conference between a Federal agency and the Service shall consist of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. Applicants may be involved in these informal discussions to the greatest extent practicable. During the conference, the Service will make advisory recommendations, if any, on ways to minimize or avoid adverse effects. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of the action, the Federal agency must review the action to determine whether formal consultation is required.

(d) If requested by the Federal agency and deemed appropriate by the Service, the conference may be conducted in accordance with the procedures for formal consultation in §402.14. An opinion issued at the conclusion of the conference may be adopted as the biological opinion when the species is listed or critical habitat is designated, but only if no significant new information is developed (including that developed during the rulemaking process on the proposed listing or critical habitat designation) and no significant changes to the Federal action are made that would alter the content of the opinion. An incidental take statement provided with a conference opinion does not become effective unless the Service adopts the opinion once the listing is final.

(e) The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency and to any applicant. The style and magnitude of this document will vary with the complexity of the conference. If formal consultation also is required for a particular action, then the Service will provide the results of the conference with the biological opinion.

§ 402.11 Early consultation.

(a) Purpose. Early consultation is designed to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions and occurs prior to the filing of an application for a Federal permit or license. Although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.

(b) Request by prospective applicant. If a prospective applicant has reason to
believe that the prospective action may affect listed species or critical habitat, it may request the Federal agency to enter into early consultation with the Service. The prospective applicant must certify in writing to the Federal agency that (1) it has a definitive proposal outlining the action and its effects and (2) it intends to implement its proposal, if authorized.

(c) Initiation of early consultation. If the Federal agency receives the prospective applicant’s certification in paragraph (b) of this section, then the Federal agency shall initiate early consultation with the Service. This request shall be in writing and contain the information outlined in §402.14(c) and, if the action is a major construction activity, the biological assessment as outlined in §402.12.

(d) Procedures and responsibilities. The procedures and responsibilities for early consultation are the same as outlined in §402.14(c)–(j) for formal consultation, except that all references to the “applicant” shall be treated as the “prospective applicant” and all references to the “biological opinion” or the “opinion” shall be treated as the “preliminary biological opinion” for the purpose of this section.

(e) Preliminary biological opinion. The contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation except that the incidental take statement provided with a preliminary biological opinion does not constitute authority to take listed species.

(f) Confirmation of preliminary biological opinion as final biological opinion. A preliminary biological opinion may be confirmed as a biological opinion issued after formal consultation if the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the early consultation. A written request for confirmation of the preliminary biological opinion should be submitted after the prospective applicant applies to the Federal agency for a permit or license but prior to the issuance of such permit or license. Within 45 days of receipt of the Federal agency’s request, the Service shall either:

(1) Confirm that the preliminary biological opinion stands as a final biological opinion; or

(2) If the findings noted above cannot be made, request that the Federal agency initiate formal consultation.

§ 402.12 Biological assessments.

(a) Purpose. A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

(b) Preparation requirement. (1) The procedures of this section are required for Federal actions that are “major construction activities”; provided that a contract for construction was not entered into or actual construction was not begun on or before November 10, 1978. Any person, including those who may wish to apply for an exemption from section 7(a)(2) of the Act, may prepare a biological assessment under the supervision of the Federal agency and in cooperation with the Service consistent with the procedures and requirements of this section. An exemption from the requirements of section 7(a)(2) is not permanent unless a biological assessment has been prepared.

(2) The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

(c) Request for information. The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.

(d) Director’s response. Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list or, in those cases where no list has
§ 402.12

been provided, advise the Federal agency or the designated non-Federal representative in writing whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area. In addition to listed and proposed species, the Director will provide a list of candidate species that may be present in the action area. Candidate species refers to any species being considered by the Service for listing as endangered or threatened species but not yet the subject of a proposed rule. Although candidate species have no legal status and are accorded no protection under the Act, their inclusion will alert the Federal agency of potential proposals or listings.

(1) If the Director advises that no listed species or critical habitat may be present, the Federal agency need not prepare a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, then the Federal agency must confer with the Service if required under §402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

(2) If a listed species or critical habitat may be present in the action area, the Director will provide a species list or concur with the species list provided. The Director also will provide available information (or references thereto) regarding these species and critical habitat, and may recommend discretionary studies or surveys that may provide a better information base for the preparation of an assessment. Any recommendation for studies or surveys is not to be construed as the Service’s opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.

(e) Verification of current accuracy of species list. If the Federal agency or the designated non-Federal representative does not begin preparation of the biological assessment within 90 days of receipt of (or concurrence with) the species list, the Federal agency or the designated non-Federal representative must verify (formally or informally) with the Service the current accuracy of the species list at the time the preparation of the assessment is begun.

(f) Contents. The contents of a biological assessment are at the discretion of the Federal agency and will depend on the nature of the Federal action. The following may be considered for inclusion:

(1) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.

(2) The views of recognized experts on the species at issue.

(3) A review of the literature and other information.

(4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.

(5) An analysis of alternate actions considered by the Federal agency for the proposed action.

(g) Incorporation by reference. If a proposed action requiring the preparation of a biological assessment is identical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may fulfill the biological assessment requirement for the proposed action by incorporating by reference the earlier biological assessment, plus any supporting data from other documents that are pertinent to the consultation, into a written certification that:

(1) The proposed action involves similar impacts to the same species in the same geographic area;

(2) No new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and

(3) The biological assessment has been supplemented with any relevant changes in information.

(h) Permit requirements. If conducting a biological assessment will involve the taking of a listed species, a permit under section 10 of the Act (16 U.S.C. 1539) and part 17 of this title (with respect to species under the jurisdiction of the FWS) or parts 220, 222, and 227 of this title (with respect to species under the jurisdiction of the NMFS) is required.
§ 402.14 Formal consultation.

(a) Requirement for formal consultation. Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) Exceptions. (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under §402.12 or as a result of informal consultation with the Service under §402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

(2) A Federal agency need not initiate formal consultation if a preliminary biological opinion, issued after early consultation under §402.11, is confirmed as the final biological opinion.
§ 402.14 50 CFR Ch. IV (10–1–01 Edition)

(c) Initiation of formal consultation. A written request to initiate formal consultation shall be submitted to the Director and shall include:

(1) A description of the action to be considered;
(2) A description of the specific area that may be affected by the action;
(3) A description of any listed species or critical habitat that may be affected by the action;
(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;
(5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and
(6) Any other relevant available information on the action, the affected listed species, or critical habitat.

Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with § 402.12. Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area or a segment of a comprehensive plan. This does not relieve the Federal agency of the requirements for considering the effects of the action as a whole.

(d) Responsibility to provide best scientific and commercial data available. The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.

(e) Duration and extension of formal consultation. Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:

(1) The reasons why a longer period is required,
(2) The information that is required to complete the consultation, and
(3) The estimated date on which the consultation will be completed.

A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.

(f) Additional data. When the Service determines that additional data would provide a better information base from which to formulate a biological opinion, the Director may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. If formal consultation is extended by mutual agreement according to § 402.14(e), the Federal agency shall obtain, to the extent practicable, that data which can be developed within the scope of the extension. The responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. The Service’s request for additional data is not to be construed as the Service’s opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. If no extension of formal consultation is agreed to, the Director will issue a biological opinion using the best scientific and commercial data available.

(g) Service responsibilities. Service responsibilities during formal consultation are as follows:

(1) Review all relevant information provided by the Federal agency or otherwise available. Such review may include an on-site inspection of the action area with representatives of the Federal agency and the applicant.
(2) Evaluate the current status of the listed species or critical habitat.

(3) Evaluate the effects of the action and cumulative effects on the listed species or critical habitat.

(4) Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

(5) Discuss with the Federal agency and any applicant the Service’s review and evaluation conducted under paragraphs (g)(1) through (3) of this section, the basis for any finding in the biological opinion, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the agency and the applicant can take to avoid violation of section 7(a)(2). The Service will utilize the expertise of the Federal agency and any applicant in identifying these alternatives. If requested, the Service shall make available to the Federal agency the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives. The 45-day period in which the biological opinion must be delivered will not be suspended unless the Federal agency secures the written consent of the applicant to an extension to a specific date. The applicant may request a copy of the draft opinion from the Federal agency. All comments on the draft biological opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. The Service will not issue its biological opinion prior to the 45-day or extended deadline while the draft is under review by the Federal agency. However, if the Federal agency submits comments to the Service regarding the draft biological opinion within 10 days of the deadline for issuing the opinion, the Service is entitled to an automatic 10-day extension on the deadline.

(6) Formulate discretionary conservation recommendations, if any, which will assist the Federal agency in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

(7) Formulate a statement concerning incidental take, if such take may occur.

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation.

(h) Biological opinions. The biological opinion shall include:

(1) A summary of the information on which the opinion is based;

(2) A detailed discussion of the effects of the action on listed species or critical habitat; and

(3) The Service’s opinion on whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “jeopardy” biological opinion”); or, the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “no jeopardy” biological opinion). A “jeopardy” biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(i) Incidental take. (1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking on the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;
(iii) In the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking;

(iv) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraphs (i)(1)(ii) and (i)(1)(iii) of this section; and

(v) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

(2) Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. The reporting requirements will be established in accordance with 50 CFR 13.45 and 18.27 for FWS and 50 CFR 220.45 and 228.5 for NMFS.

(4) If during the course of the action the amount or extent of incidental taking, as specified under paragraph (i)(1)(i) of this Section, is exceeded, the Federal agency must reinitiate consultation immediately.

(5) Any taking which is subject to a statement as specified in paragraph (i)(1) of this section and which is in compliance with the terms and conditions of that statement is not a prohibited taking under the Act, and no other authorization or permit under the Act is required.

(j) Conservation recommendations. The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

(k) Incremental steps. When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:

(1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);

(2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;

(3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;

(4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and

(5) There is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

(1) Termination of consultation. (1) Formal consultation is terminated with the issuance of the biological opinion.

(2) If during any stage of consultation a Federal agency determines that its proposed action is not likely to occur, the consultation may be terminated by written notice to the Service.

(3) If during any stage of consultation a Federal agency determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat, the consultation is terminated.

§ 402.15 Responsibilities of Federal agency following issuance of a biological opinion.

(a) Following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its section 7 obligations and the Service’s biological opinion.

(b) If a jeopardy biological opinion is issued, the Federal agency shall notify the Service of its final decision on the action.
§ 403.01 Purpose and scope of regulations.

The regulations contained in this part implement section 109 of the Act which, upon a finding by the Secretary of compliance with certain requirements, provides for the transfer of marine mammal management authority to the states.

(a) The regulations of this part apply the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority to the Federal Government.

(b) Nothing in this part shall prevent:

(1) The taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with §18.22 or §216.22 of this Title and section 109(h) of the Act, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

(c) The information collection requirements contained in §§403.03, 403.06, and 403.07 of this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq., because there are fewer than 10 respondents annually.

§ 403.02 Definitions.

The following definitions apply to this part:

(a) The term *species* includes any population stock.

(b) *Optimum Sustainable Population* or *OSP* means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(c) *State management program* means existing and proposed state statutes,
§ 403.03 Review and approval of State request for management authority.

(a) Any state may request the transfer of management authority for a species of marine mammals by submitting a written request to the Director of the Fish and Wildlife Service ("Director") for species of marine mammals under the jurisdiction of the FWS, or to the Assistant Administrator for Fisheries of the National Marine Fisheries Service ("Assistant Administrator") for species of marine mammals under the jurisdiction of the NMFS. The request must include:

(1) Copies of existing and proposed statutes, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section;

(2) A narrative discussion of the statutes, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this part; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions of state law concerning the take of marine mammals that—

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Do not permit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of §403.04 of this part, has determined that the species is at its Optimum Sustainable Population (OSP) and determined the maximum number of animals that may be taken without reducing the species below its OSP, and, in the case of Alaska, when a species is below OSP, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under state law; and

(C) A cooperative allocation agreement, if required under §403.05(a) of this part, is implemented;

(iii) Do not permit take in excess of the maximum number of animals that may be taken as determined pursuant to §403.04 of this part; provided that for...
Alaska, subsistence take may be allowed in accordance with paragraph (d) of this section, and if the species is below OSP, any level of take allowed for subsistence use shall permit the species to increase toward OSP;
(iv) Do not permit take that is for scientific research or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under §18.31 or §216.31 of this title; and
(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act.
(3) Provisions for annually acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if warranted on the basis of such evaluation, for requiring reevaluations of OSP and maximum allowable take determinations pursuant to §403.04.
(4) Procedures for the resolution of differences between the state and the appropriate Service that might arise during the development of a cooperative allocation agreement pursuant to §403.05(a) of this part.
(5) Procedures for the submission of an annual report meeting the requirements of §403.06(b) of this part to the appropriate Service regarding the administration of the state management program during the reporting period.
(6) A description of—
(i) The organization of state offices involved in the administration and enforcement of the state management program;
(ii) Any permit system relating to the marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;
(iii) State laws relating to judicial review of administrative decisions as they relate to the state management program;
(iv) State laws relating to administrative rulemaking as they relate to the state management program;
(c) In addition to the aspects of the state management program required to be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to:
(1) The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;
(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and
(3) Such other materials and information as the Service may request or which the state may deem necessary or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.
(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following concerning subsistence use of the species—
(1) A statute and regulations concerning the take of marine mammals that ensure that
(i) The taking of marine mammals species for subsistence uses will be the priority consumptive uses of the species;
(ii) If restrictions on subsistence uses of the species are required, such restrictions shall be based upon the customary and direct dependence upon the species as the mainstay of livelihood, local residency, and the availability of alternative resources; and
(iii) The taking of marine mammal species for subsistence uses is accomplished in a non-wasteful manner;
(2) Statutes or regulations that ensure that the appropriate state agency will—
(i) Authorize nonsubsistence consumptive uses of a marine mammal species only if such uses will have no significant adverse impact on subsistence uses of the species;
(ii) Regulate nonsubsistence consumptive uses in a manner which, to the maximum extent practicable, provides economic opportunities, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, for residents of rural coastal villages of Alaska who engage in subsistence uses of the species; and
(iii) Make written findings supporting the authorizations and regulations described in this paragraph based
§ 403.04 Determinations and hearings under section 109(c) of the MMPA.

(a) Introduction. In order to gain approval of its marine mammal management program the state must provide for a process, consistent with section 109(c) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from populations it manages without reducing the species below OSP. The state process must be completed before the state may exercise any management authority over the subject marine mammals, and it must include the elements set forth below.

(b) Basis, purpose, and scope. The process set forth in this section is applicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum
number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) Initial determination by the State. The state agency with responsibility for managing the species in the event management authority is transferred to the state shall make initial determinations on the basis of the best scientific evidence available of:

(1) Whether or not it is at its OSP; (2) if so, the maximum number of that species that may be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) Notice and review of initial determinations and request for hearing. The state agency shall provide notice of its initial determinations to the Service and the public and shall provide access to or copies of the documentation supporting its determinations to the Service and the public. The state agency shall indicate, in the notice of its initial determinations, the location(s) and hours during which such documentation may be inspected, and the costs, if any, of copies of such documentation.

The state agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations, and the state shall provide a reasonable time, not less than 30 days, for making the request, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) Notice of hearing. If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Service and the public not less than 30 days in advance of the scheduled date(s) of the hearing(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and description of the documentation and other evidence that will be relied upon by the state's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) Conduct of the hearing. (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notified the state agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining the witnesses or other parties with respect to matters relevant to the state's initial determinations, provided that any such written
§ 403.05 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by section 403.04 of this part have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative allocation agreement with the Secretary has been signed and the Service has transferred management authority pursuant to § 403.03(h). The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 403.04 of this part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the state may request the Service to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Service shall adopt and enforce within such zone, such of the state’s regulatory provisions as the Service considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been transferred to a state pursuant to this subpart, the Service

(3) The state agency shall advise the Service and the public of its final determinations and shall provide access to or copies of its decision document and Hearing Record.

(h) Judicial review. The state agency’s final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the state agency’s final determinations must be available under state law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706(2) (A) through (E).
shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be consistent with its management program for the species:

(1) The state shall so inform the Service, together with the reasons for such finding, within 30 days of its receipt of the application, and the Service shall not issue the permit; and

(2) The Service shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

(d) After management of a species has been transferred to the state, state and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

§ 403.06 Monitoring and review of State management program.

(a) The Service has responsibility to monitor and review implementation of all state management programs approved pursuant to this part.

(b) In order to facilitate such review, each state to which management authority has been transferred shall submit an annual report, not later than 120 days after the close of such state’s first full fiscal or calendar year following the effective date of the Service’s approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The report shall contain the following information current for each reporting period:

(1) Any changes in the state laws which comprise those aspects of the state management program submitted pursuant to §403.03(b), and, in the case of Alaska, §403.03(d), of this part;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species’ habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of budget and staffing levels for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Service may request, consistent with the Act as amended, or which the state deems necessary or advisable to facilitate review by the Service of state management of the species.

(c) Each state having an approved management program shall file a report, in a timely manner, not to exceed 45 days from the occurrence of any of the following:

(1) Any change in a relevant state law (amendments, repeaters, or new legislation or regulations or judicial precedent) as submitted pursuant to paragraphs (b)(2) through (b)(5), and in the case of Alaska, paragraph (d), of §403.03 of this part that may impair the State’s ability to implement the program;

(2) Any significant natural or man-made occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to §403.04 of this part.

(d) All components of the state request for transfer of management authority, as well as annual reports submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of the Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, or, as appropriate, at the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, and at the appropriate Service’s regional office.
§ 403.07 Revocation and return of State management authority.

(a) Revocation of management. The Service shall have responsibility to review management of a species transferred to a state under this part and to determine whether or not the implementation of the state management program continues to comply with the requirements of the Act, this part and the state’s approved management program.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistent with the Act, this part, or the state’s approved management program, the Service shall, as soon as practicable but not later than 30 days after receipt, determine whether or not the state continues to comply with the requirements of the Act, this part and the state’s approved management program.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Service determines that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this part or the state’s approved management program, it shall provide written notice to the state of its intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Service shall publish notice of such intent to revoke in the FEDERAL REGISTER and invite public comment thereon, and shall conduct an informal public hearing on the matter if requested by the state or if the Service otherwise determines it to be necessary. The Service shall provide to the state an opportunity for consultation between the Service and the state concerning such actions or failures and necessary remedial actions to be taken by the state.

(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Service, to bring the state management program into compliance with the requirements of the Act, this part and the state’s approved management program, the Service shall revoke the transfer of management authority by written notice to the state and publication in the FEDERAL REGISTER.

(b) Voluntary return of management authority to the Service. (1) If a state desires to return management of a species of marine mammals to the Service, it shall provide the Service notice of intent to return management. The Service shall accept the return of management, and such return shall become effective, upon publication of a notice in the FEDERAL REGISTER to this effect no sooner than 30 days (except in an emergency as determined by the Service) nor longer than 60 days after the state has provided notice of its intent to return management or unless otherwise agreed upon.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Service of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation and management of the species under the terms of the state management program, it shall so notify the Service and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation and management of marine mammals under the terms of the state management program, it shall so notify the Service together with the basis for the state’s determination and such notice shall be treated as a report submitted pursuant to the terms of §403.06(c)(1) of this part. In either case, the state shall provide notice to the Service as soon as practicable but not more than 30 days after issuance of the injunction. Management authority returned to the Service pursuant to this paragraph may be re-transferred to the state, notwithstanding the requirements of §403.03, when, in the judgment of the Service, the cause for return of management authority to the Service has been alleviated in such a way as to allow effective conservation and management of the species consistent with
the requirements of the Act and this part.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Service shall resume such management authority and provide for the conservation of the species within the state in accordance with the provisions of the Act.

§ 403.08 List of States to which management has been transferred.

The following states have received management authority pursuant to this part for the species listed and, where appropriate, cooperative allocation agreements pursuant to § 403.05(c) are in force: [Reserved]

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

Subpart A—General Provisions

§ 424.01 Scope and purpose.

(a) Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate, designating or revising their critical habitats. Criteria are provided for determining species to be endangered or threatened and for designating critical habitats. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species also are established.

(b) The purpose of these rules is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), that pertain to the listing of species and the determination of critical habitats.

§ 424.02 Definitions.

(a) The definitions of terms in 50 CFR 402.02 shall apply to this part 424, except as otherwise stated.

(b) Candidate means any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule.

(c) Conservation, conserve, and conserving mean to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(d) Critical habitat means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and
§ 424.10 General.

The Secretary may add a species to the lists or designate critical habitat, delete a species or critical habitat, change the listed status of a species, revise the boundary of an area designated as critical habitat, or adopt or modify special rules (see 50 CFR 17.40–17.48 and parts 222 and 227) applied to a threatened species only in accordance with the procedures of this part.

Subpart B—Revision of the Lists

§ 424.10 General.

The Secretary may add a species to the lists or designate critical habitat, delete a species or critical habitat, change the listed status of a species, revise the boundary of an area designated as critical habitat, or adopt or modify special rules (see 50 CFR 17.40–17.48 and parts 222 and 227) applied to a threatened species only in accordance with the procedures of this part.

§ 424.11 Factors for listing, delisting, or reclassifying species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in §424.02(k) is eligible for listing under the Act. A taxon of higher rank than species may be listed only if all included species are individually found to be endangered or threatened. In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group.

(b) The Secretary shall make any determination required by paragraphs (c) and (d) of this section solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

(c) A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors:

1. The present or threatened destruction, modification, or curtailment of its habitat or range;
2. Over utilization for commercial, recreational, scientific, or educational purposes;
(3) Disease or predation;
(4) The inadequacy of existing regulatory mechanisms; or
(5) Other natural or manmade factors affecting its continued existence.

(d) The factors considered in delisting a species are those in paragraph (c) of this section as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) Extinction. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) Recovery. The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered nor threatened.

(3) Original data for classification in error. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

(e) The fact that a species of fish, wildlife, or plant is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see part 23 of this title 50) or a similar international agreement on such species, or has been identified as requiring protection from unrestricted commerce by any foreign nation, or to be in danger of extinction or likely to become so within the foreseeable future by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish, wildlife, or plants, may constitute evidence that the species is endangered or threatened. The weight given such evidence will vary depending on the international agreement in question, the criteria pursuant to which the species is eligible for protection under such authorities, and the degree of protection afforded the species. The Secretary shall give consideration to any species protected under such an international agreement, or by any State or foreign nation, to determine whether the species is endangered or threatened.

(f) The Secretary shall take into account, in making determinations under paragraph (c) or (d) of this section, those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

§ 424.12 Criteria for designating critical habitat.

(a) Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. If designation of critical habitat is not prudent or if critical habitat is not determinable, the reasons for not designating critical habitat will be stated in the publication of proposed and final rules listing a species. A final designation of critical habitat shall be made on the basis of the best scientific data available, after taking into consideration the probable economic and other impacts of making such a designation in accordance with §424.19.

(1) A designation of critical habitat is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

(2) Critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or
(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

(b) In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following:

1. Space for individual and population growth, and for normal behavior;
2. Food, water, air, light, minerals, or other nutritional or physiological requirements;
3. Cover or shelter;
4. Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;
5. Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

(c) Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for information only and do not constitute the boundaries of the area. Ephemeral reference points (e.g., trees, sand bars) shall not be used in defining critical habitat.

(d) When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

Example: Several dozen or more small ponds, lakes, and springs are found in a small local area. The entire area could be designated critical habitat if it were concluded that the upland areas were essential to the conservation of an aquatic species located in the ponds and lakes.

(e) The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

(f) Critical habitat may be designated for those species listed as threatened or endangered but for which no critical habitat has been previously designated.

(g) Existing critical habitat may be revised according to procedures in this section as new data become available to the Secretary.

(h) Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.

§ 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Secretary shall consult as appropriate with affected States, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties.

§ 424.14 Petitions.

(a) General. Any interested person may submit a written petition to the Secretary requesting that one of the
actions described in §424.10 be taken. Such a document must clearly identify itself as a petition and be dated. It must contain the name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. The Secretary shall acknowledge in writing receipt of such a petition within 30 days.

(b) Petitions to list, delist, or reclassify species. (1) To the maximum extent practicable, within 90 days of receiving a petition to list, delist, or reclassify a species, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. For the purposes of this section, “substantial information” is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(2) In making a finding under paragraph (b)(1) of this section, the Secretary shall consider whether such petition—
(i) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;
(ii) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;
(iii) Provides information regarding the status of the species over all or a significant portion of its range; and
(iv) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

The petitioner may provide information that describes any recommended critical habitat as to boundaries and physical features, and indicates any benefits and/or adverse effects on the species that would result from such designation. Such information, however, will not be a basis for the determination of the substantiality of a petition.

(3) Upon making a positive finding under paragraph (b)(1) of this section, the Secretary shall commence a review of the status of the species concerned and shall make, within 12 months of receipt of such petition, one of the following findings:
(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner;
(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the FEDERAL REGISTER a proposed regulation to implement the action pursuant to §424.16 of this part, or
(iii) The petitioned action is warranted, but that—
(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and
(B) Expeditious progress is being made to list, delist, or reclassify qualified species, in which case, such finding shall be promptly published in the FEDERAL REGISTER together with a description and evaluation of the reasons and data on which the finding is based.

(c) Petitions to revise critical habitat. (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(2) In making the finding required by paragraph (c)(1) of this section, the
§ 424.15 Notices of review.

(a) If the Secretary finds that one of the actions described in §§ 424.13, 424.14, 424.15, and 424.21, or through other available avenues, the Secretary may propose revising the lists as described in § 424.10.

(b) Contents. A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule, a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources), and shall show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary shall, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat shall also include a summary of factors affecting the species and/or critical habitat.

(c) Procedures—(1) Notifications. In the case of any proposed rule to list, delist, or reclassify a species, or to designate or revise critical habitat, the Secretary shall—

(i) Publish notice of the proposal in the Federal Register;
(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule;

(iv) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to list, delist, or reclassify a species to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation;

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and

(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.

(2) Period of public comments. At least 60 days shall be allowed for public comment following publication in the FEDERAL REGISTER of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat. All other proposed rules shall be subject to a comment period of at least 30 days following publication in the FEDERAL REGISTER. The Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. A notice of any such extension or reopening shall be published in the FEDERAL REGISTER, and shall specify the basis for so doing.

(3) Public hearings. The Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list, delist, or reclassify a species, or to designate or revise critical habitat. Notice of the location and time of any such hearing shall be published in the FEDERAL REGISTER not less than 15 days before the hearing is held.

§ 424.17 Time limits and required actions.

(a) General. (1) Within 1 year of the publication of a rule proposing to determine whether a species is an endangered or threatened species, or to designate or revise critical habitat, the Secretary shall publish one of the following in the FEDERAL REGISTER:

(i) A final rule to implement such determination or revision,

(ii) A finding that such revision should not be made,

(iii) A notice withdrawing the proposed rule upon a finding that available evidence does not justify the action proposed by the rule, or

(iv) A notice extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

(2) If an extension is made under paragraph (a)(1)(iv) of this section, the Secretary shall, within the extended period, take one of the actions described in paragraphs (a)(1) (i), (ii), or (iii) of this section.

(3) If a proposed rule is withdrawn under paragraph (a)(1)(iii) of this section, the notice of withdrawal shall set forth the basis upon which the proposed rule has been found not to be supported by available evidence. The Secretary shall not again propose a rule withdrawn under such provision except on the basis of sufficient new information that warrants a reproposal.

(b) Critical habitat designations. A final rule designating critical habitat of an endangered or a threatened species shall to the extent permissible under §424.12 be published concurrently with the final rule listing such species, unless the Secretary deems that—

(1) It is essential to the conservation of such species that it be listed promptly; or

(2) Critical habitat of such species is not then determinable,
§ 424.18 Final rules—general.

(a) Contents. A final rule promulgated to carry out the purposes of the Act will be published in the Federal Register. This publication will contain the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat shall also provide a summary of factors affecting the species. A rule designating or revising critical habitat shall also contain a description of the boundaries and a map of such habitat and will, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversely modify such habitat or be affected by such designation.

(b) Effective date. A final rule shall take effect—

(1) Not less than 30 days after it is published in the Federal Register, except as otherwise provided for good cause found and published with the rule; and

(2) Not less than 90 days after (i) publication in the Federal Register of the proposed rule, and (ii) actual notification of any affected State agencies and counties or equivalent jurisdictions in accordance with § 424.16(c)(1)(ii).

(c) Disagreement with State agency. If a State agency, given notice of a proposed rule in accordance with § 424.16(c)(1)(ii), submits comments disagreeing in whole or in part with a proposed rule, and the Secretary issues a final rule that is in conflict with such comments, or if the Secretary fails to adopt a regulation for which a State agency has made a petition in accordance with § 424.14, the Secretary shall provide such agency with a written justification for the failure to adopt a rule consistent with the agency's comments or petition.

§ 424.19 Final rules—impact analysis of critical habitat.

The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities. The Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned.

§ 424.20 Emergency rules.

(a) Sections 424.16, 424.17, 424.18, and 424.19 notwithstanding, the Secretary may at any time issue a regulation implementing any action described in § 424.10 in regard to any emergency posing a significant risk to the well-being of a species of fish, wildlife, or plant. Such rules shall, at the discretion of the Secretary, take effect immediately on publication in the Federal Register. In the case of any such action that applies to a resident species, the Secretary shall give actual notice of such regulation to the State agency in each State in which such species is believed to occur. Publication in the Federal Register of such an emergency rule shall provide detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§ 424.16, 424.17, 424.18, and
424.19 (as appropriate) have been complied with during that period.

(b) If at any time after issuing an emergency rule, the Secretary determines, on the basis of the best scientific and commercial data available, that substantial evidence does not then exist to warrant such rule, it shall be withdrawn.

§ 424.21 Periodic review.

At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with §§ 424.11, 424.16, and 424.17 of this part, as appropriate. A notice announcing those species under active review will be published in the Federal Register. Notwithstanding this section’s provisions, the Secretary may review the status of any species at any time based upon a petition (see § 424.14) or upon other data available to the Service.
PART 450—GENERAL PROVISIONS


§ 450.01 Definitions

The following definitions apply to terms used in this subchapter.


Agency action means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies, including, in the instance of an application for a permit or license, the underlying activity for which the permit or license is sought.

Alternative courses of action means all reasonable and prudent alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisdiction.

Benefits means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

Biological assessment means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

Biological opinion means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

Chairman means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

Committee means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

Critical habitat refers to those areas listed as Critical Habitat in 50 CFR parts 17 and 226.

Destruction or adverse modification is defined at 50 CFR 402.02.

Federal agency means any department, agency or instrumentality of the United States.

Irreversible or irretrievable commitment of resources means any commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable or prudent alternatives which would not violate section 7(a)(2) of the Act.

Jeopardize the continued existence of is defined at 50 CFR 402.02.

Mitigation and enhancement measures means measures, including live propagation, transplantation, and habitat acquisition and improvement, necessary and appropriate (a) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (b) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

Permit or license applicant means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

Proposed action means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

Secretary means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

Service means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

To the extent that such information is available to the applicant means all pertinent information the applicant has
on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

[50 FR 8126, Feb. 28, 1985]

PART 451—APPLICATION PROCEDURE

Sec.
451.01 Definitions.
451.02 Applications for exemptions.
451.03 Endangered Species Committee.


SOURCE: 50 FR 8127, Feb. 28, 1985, unless otherwise noted.

§ 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

§ 451.02 Applications for exemptions.

(a) Scope. This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) Where to apply. Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Department of the Interior, 18th and C Street, NW., Washington, DC 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

(c) Who may apply. (1) A Federal agency, (2) the Governor of the State in which an agency action will occur, if any, or (3) a permit or license applicant may apply to the Secretary for an exemption for an agency action if, after consultation under section 7(a)(2) of the Act, the Secretary’s opinion indicates that the agency action would violate section 7(a)(2) of the Act.

(d) When to apply. (1) Except in the case of agency action involving a permit or license application, an application for an exemption must be submitted to the Secretary within 90 days following the termination of the consultation process.

(2) In the case of agency action involving a permit or license application, an application for an exemption may be submitted after the Federal agency concerned formally denies the permit or license. An applicant denied a permit or license may not simultaneously seek administrative review within the permitting or licensing agency and apply for an exemption. If administrative review is sought, an application for an exemption may be submitted if that review results in a formal denial of the permit or license. For an exemption application to be considered, it must be submitted within 90 days after the date of a formal denial of a permit or license.

(e) Contents of the application when submitted. Exemption applicants must provide the following information at the time the application is submitted.

(1) Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant’s proposed action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought, including a statement of who in the Federal agency denied the permit or license, the grounds for the denial, and a copy of the permit or license denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of each alternative to the proposed action considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent known.

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(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.
(ix) A description of resources committed by the Federal agency, or the permit or license applicant, if any, to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant other than a Federal agency:

(i) A comprehensive description of the applicant’s proposed action.
(ii) A description of the permit or license sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.
(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.
(iv) A copy of the permit or license denial.
(v) A copy of the biological assessment, if one was prepared.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a description of the license or permit applicant’s proposed action.
(ii) A description of the permit or license, if any, sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial, to the extent that such information is available to the Governor.
(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained before the agency can proceed with the proposed action, to the extent that such information is available to the Governor.
(iv) A copy of the biological assessment, if one was prepared.
(v) A copy of the biological opinion.

(5) Each applicant, whether a Federal agency, a permit or license applicant, or a Governor, must also submit the following:

(i) A complete statement of the nature and the extent of the benefits of the proposed action.
(ii) A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iv) A complete statement explaining why the proposed action is in the public interest.
(v) A complete explanation of why the action is of regional or national significance.
(vi) A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

(6) When the exemption applicant is a license or permit applicant or a Governor, a copy of the application shall be provided by the exemption applicant at the time the application is filed, to the Federal agency which denied the license or permit.

(f) Review of the application by the Secretary. (1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with the requirements set forth in paragraphs (c), (d) and (e) of this section.

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with paragraphs (c), (d) and (e) of this section. If the Secretary rejects an application because it does not contain the information required by paragraph (e) of this section, the applicant may resubmit a revised application so long as the applicant does so during the 90 day period specified in paragraph (d) of this section.

(3) If the Secretary finds that the application meets the requirements of paragraphs (c), (d), and (e) of this section, he will consider the application in accordance with part 452.

(g) Notification of the Secretary of State. The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with §451.02.

(h) Public notification. Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the Federal Register (1) announcing that an application has been filed, (2) stating the applicant's name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) summarizing the information contained in the application, (5) designating the place where copies of the application can be obtained and (6) specifying the name of the person to contact for further information. The Secretary will promptly notify each member of the Committee upon receipt of an application for exemption.

(i) The information collection requirements contained in part 451 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq., because it is anticipated there will be fewer than ten respondents annually.

§ 451.03 Endangered Species Committee.

(a) Scope. This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) Appointment of State member. (1) Upon receipt of an application for exemption, the Secretary shall promptly notify the Governors of each affected State, if any, as determined by the Secretary, and request the Governors to recommend individuals to be appointed to the Endangered Species Committee for consideration of the application. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint, within 30 days after the application for exemption was submitted, an individual to the Endangered Species Committee.

PART 452—CONSIDERATION OF APPLICATION BY THE SECRETARY

Sec. 452.01 Purpose and scope.

452.02 Definitions.

452.03 Threshold review and determinations.

452.04 Secretary's report.

452.05 Hearings.

452.06 Parties and intervenors.

452.07 Separation of functions and ex parte communications.

452.08 Submission of Secretary's report.

452.09 Consolidated and joint proceedings.


SOURCE: 50 FR 8129, Feb. 28, 1985, unless otherwise noted.
§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by the Secretary when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) Threshold determinations. Within 20 days after receiving an exemption application, or a longer time agreed upon between the exemption applicant and the Secretary, the Secretary shall conclude his review and determine:

1. Whether any required biological assessment was conducted;
2. To the extent determinable within the time period provided, whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources; and
3. Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

(b) Burden of proof. The exemption applicant has the burden of proving that the requirements of § 452.03(a) have been met.

(c) Negative finding. If the Secretary makes a negative finding on any threshold determination, the Secretary shall deny the application and notify the exemption applicant in writing of his finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. The Secretary’s denial shall constitute final agency action for purposes of judicial review under chapter 7 of title 5 of the United States Code.

(d) Positive finding. If the Secretary makes a positive finding on each of the threshold determinations, he shall notify the exemption applicant in writing that the application qualifies for consideration by the Endangered Species Committee.

(e) Secretary of State opinion. The Secretary shall terminate the exemption process immediately if the Secretary of State, pursuant to his obligations under section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Secretary’s report.

(a) Contents of the report. If the Secretary has made a positive finding on each of the threshold determinations, he shall proceed to gather information and prepare a report for the Endangered Species Committee:

1. Discussing the availability of reasonable and prudent alternatives to the proposed action;
2. Discussing the nature and extent of the benefits of the proposed action;
3. Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;
4. Summarizing the evidence concerning whether the proposed action is of national or regional significance;
5. Summarizing the evidence concerning whether the proposed action is in the public interest;
6. Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and
7. Discussing whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources.

(b) Preparation of the report. The report shall be prepared in accordance with procedures set out in § 452.05 and § 452.09.

§ 452.05 Hearings.

(a) Hearings. (1) To develop the record for the report under § 452.04, the Secretary, in consultation with the members of the Committee, shall hold a hearing in accordance with 5 U.S.C. 554, 555, and 556.

(2) The Secretary shall designate an Administrative Law Judge to conduct the hearing. The Secretary shall assign
technical staff to assist the Administrative Law Judge.

(3) When the Secretary designates the Administrative Law Judge, the Secretary may establish time periods for conducting the hearing and closing the record.

(4) The Secretary may require the applicant to submit further discussions of the information required by §451.02(e)(5). This information will be made part of the record.

(b) Prehearing conferences. (1) The Administrative Law Judge may, on his own motion or the motion of a party or intervenor, hold a prehearing conference to consider:

(i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents;

(ii) The limitation of the number of witnesses;

(iii) Questions of law which may bear upon the course of the hearings;

(iv) Prehearing motions, including motions for discovery; and

(v) Any other matter which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the Administrative Law Judge shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) Notice of hearings. Hearings and prehearing conferences will be announced by a notice in the FEDERAL REGISTER stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearings.

(d) Conduct of hearings—(1) Admissibility of evidence. Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(2) Motions, objections, rebuttal and cross-examination. Motions and objections may be filed with the Administrative Law Judge, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpoena, and their respective counsel.

(i) Objections. Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) Offers of proof. When an objection is sustained, the examining party may make a specific offer of proof and the Administrative Law Judge may receive the evidence in full. Such evidence, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) Motions. Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the Administrative Law Judge may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the Administrative Law Judge.

(e) Applicant responsibility. In proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

(f) Open meetings and record. All hearings and all hearing records shall be open to the public.

(g) Requests for information, subpoenas. (1) The Administrative Law Judge is authorized to exercise the authority of the Committee to request, subject to the Privacy Act of 1974, that any person provide information necessary to enable the Committee to carry out its duties. Any Federal agency or the exemption applicant shall furnish such information to the Administrative Law Judge. (2) The Administrative Law Judge may exercise the authority of the Committee to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.
§ 452.06 Parties and intervenors.

(a) Parties. The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) Intervenors. (1) The Administrative Law Judge shall provide an opportunity for intervention in the hearing. A motion to intervene must state the petitioner’s name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner’s participation would assist in the determination of the issues in question.

(2) The Administrative Law Judge shall grant leave to intervene if he determines that an intervenor’s participation would contribute to the fair determination of issues. In making this determination, the Administrative Law Judge may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.07 Separation of functions and ex parte communications.

(a) Separation of functions. (1) The Administrative Law Judge and the technical staff shall not be responsible for or subject to the supervision or direction of any person who participated in the endangered species consultation at issue;

(2) The Secretary shall not allow an agency employee or agent who participated in the endangered species consultation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) Ex parte communications. The provisions of 5 U.S.C. 557(d) apply to the hearing and the preparation of the report.

§ 452.08 Submission of Secretary’s report.

(a) Upon closing of the record, the Administrative Law Judge shall certify the record and transmit it to the Secretary for preparation of the Secretary’s report which shall be based on the record. The Secretary may direct the Administrative Law Judge to reopen the record and obtain additional information if he determines that such action is necessary.

(b) The Secretary shall submit his report and the record of the hearing to the Committee within 140 days after making his threshold determinations under §452.03(a) or within such other period of time as is mutually agreeable to the applicant and the Secretary.

§ 452.09 Consolidated and joint proceedings.

(a) When the Secretary is considering two or more related exemption applications, the Secretary may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

(b) When the Secretaries of the Interior and Commerce are considering two or more related exemption applications, they may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.
453.01 Purpose.
453.02 Definitions.
453.03 Committee review and final determinations.
453.04 Committee information gathering.
453.05 Committee meetings.
453.06 Additional Committee powers.


SOURCE: 50 FR 8130, Feb. 28, 1985, unless otherwise noted.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.
§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) Final determinations. Within 30 days of receiving the Secretary's report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote in which at least five of its members concur:

(1) It determines that based on the report to the Secretary, the record of the hearing held under § 452.05, and on such other testimony or evidence as it may receive:

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) The action is of regional or national significance; and

(iv) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and,

(2) It establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned. Any required mitigation and enhancement measures shall be carried out and paid for by the exemption applicant.

(b) Decision and order. The Committee's final determinations shall be documented in a written decision. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decision and order in the Federal Register as soon as practicable.

(c) Permanent exemptions. Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(1) Regardless of whether the species was identified in the biological assessment, and

(2) Only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. Notwithstanding the foregoing, an exemption shall not be permanent if—

(i) The Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and

(ii) The Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary's determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(d) Finding by the Secretary of Defense. If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.

(a) Written submissions. When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the Federal Register inviting written submissions from interested persons.
The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) Public hearing. (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, a public hearing shall be held.

(2) The public hearing shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) Notice. The Chairman shall publish in the FEDERAL REGISTER a general notice of a public hearing, stating the time, place and nature of the public hearing.

(4) Procedure. The public hearing shall be open to the public and conducted in an informal manner. All information relevant to the Committee’s final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) Transcript. Public hearings will be recorded verbatim and a transcript thereof will be available for public inspection.

§ 453.05 Committee meetings.

(a) The committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee’s final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) Committee members appointed from the affected States shall collectively have one vote. They shall determine among themselves how it will be cast.

(e) All meetings and records of the Committee shall be open to the public.

(f) The Chairman shall publish a notice of all Committee meetings in the FEDERAL REGISTER. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional Committee powers.

(a) Secure information. Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) Subpoenas. For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) Rules and orders. The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) Delegate authority. The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.
## CHAPTER V—MARINE MAMMAL COMMISSION

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PART 501—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec. 501.1 Purpose and scope.
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501.4 Requests for access—times, places and requirements for identification of individuals.
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501.7 Agency review of requests for amendment or correction of a record.
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501.9 Fees.

AUTHORITY: Sec. 3, Privacy Act of 1974 (5 U.S.C. 552a(f)).
SOURCE: 40 FR 49276, Oct. 21, 1975, unless otherwise noted.

§ 501.1 Purpose and scope.
(a) Purpose. The purpose of these rules is to fulfill the responsibilities of the Marine Mammal Commission (the "Commission") under section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(f) (the "Act") by establishing procedures whereby an individual will be notified if any system of records maintained by the Commission contains a record pertaining to him or her; by defining the times and places at which records will be made available and the identification requirements which must be met by any individual requesting access to them; by establishing procedures for disclosure to an individual, on request, of any record pertaining to him or her; and by establishing procedures for processing, reviewing, and making a final determination on requests of individuals to correct or amend a record pertaining to him or her, including a provision for administrative appeal of initial adverse determinations on such requests. These rules are promulgated with particular attention to the purposes and goals of the Act, and in accordance therewith provide for relative ease of access to records pertaining to an individual, and for maintenance by the Commission of only those records which are current, accurate, necessary, relevant and complete with respect to the purposes for which they were collected.

(b) Scope. These rules apply only to "record" contained in "systems of records," defined by the Act as follows:

The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

The term "system of records" means a group of any record under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Notices with respect to the systems maintained by the Commission have been published in the FEDERAL REGISTER, as required by the Act. These rules pertain only to the systems of records disclosed in such notices, and to any systems that may become the subject of a notice at any time in the future.

(c) Nothing in these rules shall be construed as pertaining to requests made under the Freedom of Information Act, 5 U.S.C. 552.

§ 501.2 Definitions.
(a) As used in this part:
(2) The term Commission means the Marine Mammal Commission.
(3) The term Director means the Executive Director of the Marine Mammal Commission.
(4) The term Privacy Officer means an individual designated by the Director to receive all requests regarding the existence of records, requests for access and requests for correction or amendment; to review and make initial determinations regarding all such requests; and to provide assistance to any individual wishing to exercise his or her rights under the Act.

(b) Other terms shall be used in this part in accordance with the definitions contained in section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(a).
§ 501.3 Procedure for responding to requests regarding the existence of records pertaining to an individual.

Any individual may submit a request to be notified whether a system of records, with respect to which the Commission has published a notice in the FEDERAL REGISTER, contains a record pertaining to him or her. Requests may be made in writing to the Privacy Officer or by appearing in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006 between the hours of 9:00 a.m. and 5:00 p.m. on any working day. Systems of records that are the subject of a request should be identified by reference to the system name designated in the Notice of Systems of Records published in the FEDERAL REGISTER. In the event a system name is not known to the individual, a general request will suffice if it indicates reasons for the belief that a record pertaining to the named individual is maintained by the Commission. Receipt of inquiries submitted by mail will be acknowledged within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) unless a response can also be prepared and forwarded to the individual within that time.

§ 501.4 Requests for access—times, places and requirements for identification of individuals.

Requests for access to a system of records pertaining to any individual may be made by that individual by mail addressed to the Privacy Officer, or by submitting a written request in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006, between the hours of 9:00 a.m. and 5:00 p.m. on any working day. Assistance in gaining access under this section, securing an amendment or correction under § 501.6, or preparing an appeal under §§ 501.5(d) and 501.8 shall be provided by the Privacy Officer on request directed to the Commission office. An individual appearing in person at the Commission offices will be granted immediate access to any records to which that individual is entitled under the Act upon satisfactory proof of identity by means of a document bearing the individual’s photograph or signature. For requests made by mail, identification of the individual shall be adequate if established by means of submitting a certificate of a notary public, or equivalent officer empowered to administer oaths, substantially in accord with the following:

City of: ____________________________ County of: ____________________________
Name of individual) who affixed (his) (her) signature below in my presence, came before me, a (Title), in the aforesaid County and State, this _____ day of _____, 19___, and established (his)(her) identity to my satisfaction.

My Commission expires: ________________.

The certificate shall not be required, however, for written requests pertaining to non-sensitive information or to information which would be required to be made available under the Freedom of Information Act. The Privacy Officer shall determine the adequacy of any proof of identity offered by an individual.

[41 FR 5, Jan. 2, 1976]

§ 501.5 Disclosure of requested information.

(a) Upon request and satisfactory proof of identity, an individual appearing at the Commission offices shall be given immediate access to and permission to review any record, contained in a system of records, pertaining to him or her, shall be allowed to have a person of his/her choosing accompany him/her, and shall be given a copy of all or any portion of the record. The individual to which access is granted shall be required to sign a written statement authorizing the presence of the person who accompanies him or her, and authorizing discussion of his or her record in the presence of the accompanying person.

(b) Requests made by mail to the Privacy Officer at the Commission offices will be acknowledged within 10 days from date of receipt (excluding Saturdays, Sundays, and legal public holidays). This acknowledgement shall advise the individual whether access to the record will be granted and, if access is granted, copies of such records shall be enclosed.

(c) If the Privacy Officer initially determines to deny access to all or any portion of a record, notice of denial
shall be given to the individual in writing, within 30 days (excluding Saturdays, Sundays and holidays) after acknowledgement is given, and shall include the following:

(1) The precise record to which access is being denied;
(2) The reason for denial, including a citation to the appropriate provisions of the Act and of these Rules;
(3) A statement that the denial may be appealed to the Director;
(4) A statement of what steps must be taken to perfect an appeal to the Director; and,
(5) A statement that the individual has a right to judicial review under 5 U.S.C. 552a(g)(1) of any final denial issued by the Director.

§ 501.7 Administrative appeal of an initial denial, in whole or in part, of any request for access to a record, shall be available. An individual may appeal by submitting to the Director a written request for reconsideration stating therein specific reasons for reversal which address directly the reasons for denial stated in the initial notice of denial. If access is denied on appeal, a final notice of denial shall be sent to the individual within 30 days (excluding Saturdays, Sundays and holidays), and shall state with particularity the grounds for rejecting all reasons for reversal submitted by the individual. The denial shall then be deemed final for purposes of obtaining judicial review.

§ 501.6 Requests for correction or amendment of a record.

(a) Any individual may request the correction or amendment of a record pertaining to him or her in writing addressed to the Privacy Officer at the Commission offices. Verification of identity required for such requests shall be the same as that specified in § 501.4 of this part with respect to requests for access. Records sought to be amended must be identified with as much specificity as is practicable under the circumstances of the request, and at a minimum, should refer to the system name designated in the Notice of System Records published in the Federal Register, the type of record in which the information thought to be improperly maintained or incorrect is contained, and the precise information that is the subject of the request (for example, system name, description of record, paragraph, sentence, line, words). Assistance in identifying a record, and in otherwise preparing a request, may be obtained by contacting the Privacy Officer at the Commission offices.

(b) A request should, in addition to identifying the individual and the record sought to be amended or corrected, include:

(1) The specific wording or other information to be deleted, if any;
(2) The specific wording or other information to be inserted, if any, and the exact place in the record at which it is to be inserted, and,
(3) A statement of the basis for the requested amendment or correction (e.g. that the record is inaccurate, unnecessary, irrelevant, untimely, or incomplete), together with supporting documents, if any, which substantiate the statement.

§ 501.7 Agency review of requests for amendment or correction of a record.

(a) Where possible, each request for amendment or correction shall be reviewed, and a determination on the request made, by the Privacy Officer within 10 days of receipt (excluding Saturdays, Sundays and holidays). Requests shall be acknowledged within that period where insufficient information has been provided to enable action to be taken. An acknowledgement shall inform the individual making the request of the estimated time within which a disposition of the request is expected to be made, and shall prescribe such further information as may be necessary to process the request. The request shall be granted, or an initial decision to deny shall be made, within ten days of receipt of all information specified in the acknowledgement (excluding Saturdays, Sundays and holidays).

(b) Within 30 days (excluding Saturdays, Sundays and holidays) after arriving at a decision on a request, the Privacy Officer shall either:
§ 501.8 Appeal of initial denial of a request for amendment or correction.

(a) The initial denial of a request for amendment or correction may be appealed by submitting to the Director the following appeal papers:

(1) A copy of the original request for amendment or correction;
(2) A copy of the initial denial; and
(3) A precise statement of the reasons for the individual’s belief that the denial is in error, referring specifically to the criteria contained in §501.7(c)(1) through (8).

The appeal must be signed by the individual. While these papers normally will constitute the entire Record on Appeal, the Director may add additional information, from sources other than the individual, where necessary to facilitate a final determination. Any such additional information added to the record shall promptly be disclosed to the individual to the greatest extent possible, and an opportunity for comment thereon shall be afforded prior to the final determination. Appeals should be submitted to the Director within 90 days after the date of the initial denial.

(b) The Director shall issue a final determination on appeal within thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date on which a completed Record on Appeal (including any additional information deemed necessary) is received. Review, and final determination by the Director, shall be based upon the criteria specified in §501.7(c)(1) through (8).

(c) If the appeal is resolved favorably to the individual, the final determination shall specify the amendments or corrections to be made. Copies of the final determination shall be transmitted promptly to the individual and to the Privacy Officer. The Privacy Officer shall make the requested amendment or correction and advise the individual in writing of such action.

(d) If the appeal is denied, the final determination shall state, with particularity, the reasons for denial, including a citation to an appropriate section of the Act and of these Rules. The final determination shall be forwarded promptly to the individual, together with a notice which shall inform the individual of the right of further appeal within 90 days from the date of the final determination. The individual shall notify the Privacy Officer in writing within 30 days of the filing of such an appeal.

§ 501.8 (1) Make the requested amendment or correction, in whole or in part, and advise the individual in writing of such action; or,
(2) Advise the individual in writing that the request has been initially denied, in whole or in part, stating, with respect to those portions denied;
(1) The date of the denial;
(2) The reasons for the denial, including a citation to an appropriate section of the Act and these Rules; and,
(3) The right of the individual to prosecute an appeal and to obtain judicial review should a final denial result from the appeal.

(c) In reviewing a request for amendment or correction of a record, the Privacy Officer shall consider the following criteria:

(1) The sufficiency of the evidence submitted by the individual;
(2) The factual accuracy of the information sought to be amended or corrected;
(3) The relevance and necessity of the information sought to be amended or corrected in terms of the purposes for which it was collected;
(4) The timeliness and currency of the information sought to be amended or corrected in terms of the purposes for which it was collected;
(5) The completeness of the information sought to be amended or corrected in terms of the purposes for which it was collected;
(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;
(7) The character of the record sought to be corrected or amended; and,
(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual. If an amendment or correction is otherwise permissible under the Act and other relevant statutes, a request shall be denied only if the individual has failed to establish, by a preponderance of the evidence, the propriety of the amendment or correction in light of these criteria.

the individual of his or her right to submit to the Privacy Officer, for inclusion in the record, a concise statement of grounds for disagreement with the final determination. Receipt of any such statement shall be acknowledged by the Privacy Officer, and all subsequent and prior users of the record shall be provided copies of the statement. The notice shall also inform the individual of his or her right, under 5 U.S.C. 552a(g)(1), to obtain judicial review of the final determination.


§ 501.9 Fees.
A fee of $0.10 shall be charged for each copy of each page of a record made, by photocopy or similar process, at the request of an individual. No fee shall be charged for copies made at the initiative of the Commission incident to granting access to a record. A total copying fee of $2.00 or less may be waived by the Privacy Officer, but fees for all requests made contemporaneously by an individual shall be aggregated to determine the total fee.

[41 FR 5, Jan. 2, 1976]

PART 510—IMPLEMENTATION OF THE FEDERAL ADVISORY COMMITTEE ACT

Sec. 510.1 Purpose.
510.2 Scope.
510.3 Definitions.
510.4 Calling of meetings.
510.5 Notice of meetings.
510.6 Public participation.
510.7 Closed meetings.
510.8 Minutes.
510.9 Uniform pay guidelines.

AUTHORITY: Sec. 8(a), Federal Advisory Committee Act, 5 U.S.C. App. I.

SOURCE: 41 FR 3306, Jan. 22, 1976, unless otherwise noted.

§ 510.1 Purpose.
The regulations prescribed in this part set forth the administrative guidelines and management controls for advisory committees reporting to the Marine Mammal Commission. These regulations are authorized by section 8(a) of the Federal Advisory Committee Act, 5 U.S.C. appendix I. Guidelines and controls are prescribed for calling of meetings, notice of meetings, public participation, closing of meetings, keeping of minutes, and compensation of committee members, their staff and consultants.

§ 510.2 Scope.
These regulations shall apply to the operation of advisory committees reporting to the agency.

§ 510.3 Definitions.
For the purposes of this part,
(a) The term Act means the Federal Advisory Committee Act, 5 U.S.C. appendix I;
(b) The term Chairperson means each person selected to chair an advisory committee established by the Commission;
(c) The term Commission means the Marine Mammal Commission, established by 16 U.S.C. 1401(a);
(d) The term committee means any advisory committee reporting to the Commission; and
(e) The term Designee means the agency official designated by the Chairman of the Commission (1) to perform those functions specified by sections 10(e) and (f) of the Act, and (2) to perform such other responsibilities as are required by the Act and applicable regulations to be performed by the “agency head.”

§ 510.4 Calling of meetings.
(a) No committee shall hold any meeting except with the advance approval of the Designee. Requests for approval may be made, and approval to hold meetings may be given orally or in writing, but if approval is given orally, the fact that approval has been given shall be stated in the public notice published pursuant to §510.5 of these regulations.
(b) An agenda shall be submitted to, and must be approved by, the Designee in advance of each committee meeting, and that meeting shall be conducted in accordance with the approved agenda. The agenda shall list all matters to be considered at the meeting, and shall indicate when any part of the meeting will be closed to the public on the authority of exemptions contained in the
§ 510.5 Notice of meetings.

(a) Notice of each committee meeting shall be timely published in the Federal Register. Publication shall be considered timely if made at least 15 days before the date of the meeting, except that shorter notice may be provided in emergency situations.

(b) The notice shall state the time, place, schedule and purposes of the committee meeting, and shall include, whenever it is available, a summary of the agenda. The notice shall indicate the approximate times at which any portion of the meeting will be closed to the public and shall include an explanation for the closing of any portion of the meeting pursuant to § 510.7.

§ 510.6 Public participation.

(a) All committee meetings, or portions of meetings, that are open to the public shall be held at a reasonable time and at a place that is reasonably accessible to the public. A meeting room shall be selected which, within the bounds of the resources and facilities available, affords space to accommodate all members of the public who reasonably could be expected to attend.

(b) Any member of the public shall be permitted to file a written statement with the committee, either by personally delivering a copy to the Chairperson, or by submitting the statement by mail to the Marine Mammal Commission Offices at the address indicated in the notice of meeting. Such statements should be received at least one week in advance of the scheduled meeting at which they are expected to be considered by the committee.

(c) Opportunities will ordinarily be afforded to interested persons to speak to agenda items during that portion of the open meeting during which that item is to be considered by the committee, subject to such reasonable time limits as the committee may establish, and consideration of the extent to which the committee has received the benefit of comments by interested persons, the complexity and the importance of the subject, the time constraints under which the meeting is to be conducted, the number of persons who wish to speak during the meeting, and the extent to which the statement provides the committee with information which has not previously been available and is relevant to its decision or other action on that subject. Interested persons may be required to serve reasonable notice of their intentions to speak so that the committee may assess whether procedures and scheduling for the meeting can be adjusted to accommodate large numbers of participants.

§ 510.7 Closed meetings.

(a) Whenever the committee seeks to have all or a portion of a meeting closed to the public on the basis of an exemption provided in 5 U.S.C. 552(b), the Chairperson shall notify the Designee at least 30 days before the scheduled date of the meeting. The notification shall be in writing and shall specify all the reasons for closing any part of the meeting.

(b) If, after consultation with the General Counsel of the Commission, the Designee finds the request to be warranted and in accordance with the policy of the Act, the request shall be granted. The determination of the Designee to grant any such request shall be in writing and shall state the specific reasons for closing all or a part of the meeting. Copies of the determination shall be made available to the public upon request.

§ 510.8 Minutes.

Detailed minutes shall be kept of each portion of each committee meeting. The minutes shall include: the time and place of the meeting; a list of the committee members and staff in attendance; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the committee; a description of the extent to which the meeting was open to the public; and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the open sessions. The Chairperson
shall certify to the accuracy of the minutes.

§ 510.9 Uniform pay guidelines.

(a) Compensation of members and staff of, and consultants to the Committee of Scientific Advisors on Marine Mammals is fixed in accordance with 16 U.S.C. 1401(e), 1403(b), and 1406.

(b) Compensation for members and staff of, and consultants to all advisory committees reporting to the Commission except the Committee of Scientific Advisors on Marine Mammals shall be fixed in accordance with guidelines established by the Director of the Office of Management and Budget pursuant to section 7(d) of the Act, 5 U.S.C. appendix I.

PART 520—PUBLIC AVAILABILITY OF AGENCY MATERIALS

§ 520.1 Purpose.

These regulations implement the provisions of the “Freedom of Information Act,” 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Commission, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Commission to recover direct search and duplication costs.

§ 520.2 Scope.

(a) These regulations shall apply to all final opinions, including concurring and dissenting opinions, as well as orders, made by the Commission in the adjudication of cases; to all statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER; to the Commission’s administrative staff manuals and instructions to staff that affect a member of the public; and to any other Commission records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section.

(b) Requests for inspection and copies shall not be granted with respect to materials that are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;
§ 520.3 Definitions.

As used in these regulations:

(a) The term Commission means the Marine Mammal Commission;
(b) The term Director means the Executive Director of the Marine Mammal Commission;
(c) The term exempt materials means those materials described in §520.2(b);
(d) The term non-exempt materials refers to all materials described in §520.2(a), but not included in §520.2(b); and
(e) The term General Counsel means the General Counsel of the Marine Mammal Commission.

§ 520.4 Availability of materials.

(a) All non-exempt materials shall be available for inspection during normal business hours at the Commission offices, 1625 I Street, NW., Room 307, Washington, DC. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials.
(b) Requests to inspect, and obtain copies of, any material maintained by the Commission may be made in person at the Commission offices, or submitted in writing to the Executive Director, Marine Mammal Commission, 1625 I St., NW., Room 307, Washington, DC 20006. Each request should include a reasonable description of the material being sought, and should contain sufficient detail to facilitate retrieval of the material without undue delay. The Commission staff shall assist to the extent practicable in identifying material that is imprecisely described by the person requesting such material.
(c) An initial determination whether, and to what extent, to grant each request shall be made by the General Counsel or his delegate within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified immediately of the determination made. In making such determinations, it shall first be considered whether the material requested is of a type described in §520.2(a); if it is, the request shall be granted unless the material is exempted by §520.2(b). If the material requested is not of a type described in §520.2(a), or is the subject of one or more exemptions, the request shall be denied.
(d) If a determination is made to grant a request, the relevant material shall promptly be made available for inspection at the Commission offices. Copies of the material disclosed shall be furnished within a reasonable time after payment of the fee specified in §520.7. Copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request and payment of the fee. Larger numbers of copies may be furnished at the earliest convenience of the Commission staff, but must be furnished within a reasonable time following payment of the fee.
(e) Whenever required to prevent a clearly unwarranted invasion of personal privacy, the General Counsel or his delegate shall determine that identifying details shall be deleted from an opinion, statement of policy, interpretation, or staff manual or instruction to which access is granted or of which copies are furnished. Where portions of the requested material are exempt under §520.2(b), and are reasonably separable from the remainder of the material, those portions shall be excised from the material disclosed. Whenever details are deleted or portions are excised and not disclosed, the notification shall include the information specified in §520.4(f).
(f) If a determination is made to deny a request, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under §520.5, to appeal the denial to the Director.
§ 520.5 Administrative appeal.

(a) An appeal to the Director of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests must state specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests should be addressed to the Director at the Commission offices.

(b) The Director shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Director, any material with which the reversal is concerned shall be made available for inspection, and copies shall be furnished, in accordance with §520.4(d).

(d) If the denial is upheld, in whole or in part, the Director shall include in the notification a statement of the requester’s right of judicial review under 5 U.S.C. 552(a)(4), and the names and positions of the persons responsible for the denial.

§ 520.6 Extensions of time.

(a) Whenever unusual circumstances exist, as set forth in §520.6(b), the times within which determinations must be made by the General Counsel on requests for access (10 working days), and by the Director on requests for reconsideration (20 working days), may be extended by written notice to the requester. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. The maximum extension of time allowed under this section shall be 10 working days, but shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, “unusual circumstances” shall mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 520.7 Fees.

(a) The following standard charges for document search and duplication, based on the direct costs of such services, must be paid before access to, or copies of material will be granted under these regulations:

(1) Search: $4.00 per person-hour for clerical time; $8.00 per person-hour for professional or supervisory time;

(2) Duplication: $0.10 per page of photocopied material.

(b) The Commission shall furnish without charge, or at a reduced charge, copies of any material disclosed pursuant to these regulations, whenever the General Counsel or the Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 530.2 Ensuring that environmental documents are actually considered in agency decision-making.

Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, Commission officials shall:

(a) Consider all relevant environmental documents in evaluating proposals for agency actions;
(b) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes;
(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating any proposal for action by the Commission which is likely to significantly affect the quality of the human environment; and
(d) Where an environmental impact statement (EIS) has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS. All Commission officials directly involved in developing, evaluating, and/or reaching decisions on proposed actions shall consider relevant environmental documents and comply with the applicable provisions of the NEPA process.

§ 530.3 Typical classes of action.

Section 1507.3(b)(2), in conjunction with §1508.4, requires agencies to identify typical classes of action that warrant similar treatment under NEPA with respect to the preparation of EIS’s or environmental assessments. As a general matter, the Commission’s activities do not include actions for which EIS’s or environmental assessments are required. Its activities involve:

(a) Consultation with and recommendations to other Federal agencies for actions relating to marine mammal protection and conservation for which an EIS or environmental assessment is either not required by the NEPA regulations or for which an EIS or environmental assessment is prepared by another Federal agency; and
(b) Research contracts relating to policy issues, biological-ecological data needed to make sound management decisions, and better methods for collecting and analyzing data. These activities are not, by themselves, major Federal actions significantly affecting the quality of the human environment and the Commission’s activities are therefore categorically excluded from the requirement to prepare an EIS or environmental assessment except for proposals for legislation which are initiated by the Commission, for which the Commission shall develop environmental assessments or EIS’s, as appropriate, in accordance with the NEPA regulations. The Commission shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or
(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 530.4 Environmental information.

Interested persons may contact the Office of the General Counsel for information regarding the Commission’s compliance with NEPA.

PART 540—INFORMATION SECURITY

Sec.
540.1 Policy.
540.2 Program.
540.3 Procedures.

AUTHORITY: Executive Order 12356.

§ 540.1 Policy.

It is the policy of the Marine Mammal Commission to act in accordance with Executive Order 12356 in matters relating to national security information.

(44 FR 55381, Sept. 26, 1979)
§ 540.2 Program.

The Executive Director is designated as the Commission’s official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions, and complaints regarding all elements of this program, and is solely responsible for changes to it and for insuring that it is at all times consistent with Executive Order 12356. The Executive Director also serves as the Commission’s official contact for requests for declassification of materials submitted under the provisions of Executive Order 12356, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12356 are acted upon within 60 days of receipt.

[44 FR 55381, Sept. 26, 1979]

§ 540.3 Procedures.

(a) Mandatory declassification review. All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Executive Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12356, unless the fact of its existence or non-existence would itself be classified under Executive Order 12356. Requests for declassification shall be acted upon promptly providing that the request reasonably describes the information which is the subject of the request for declassification. In light of the fact that the Commission does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Executive Director will refer all requests for national security information in its custody to the Federal agency that classified it or, if the agency that classified it has either ceased to exist or transferred the information in conjunction with a transfer of functions, to the appropriate federal agency exercising original classification authority with respect to the same subject, for review and disposition in accordance with Executive Order 12356 and that agency’s regulations and guidelines.

(b) Exceptional cases. When an employee or contractor of the Commission originates information that is believed to require classification, the Executive Director shall ensure that it is protected in accordance with Executive Order 12356 and shall promptly transmit it under appropriate safeguards to the agency with appropriate subject matter jurisdiction and classification authority for review and action in accordance with the Order and that agency’s regulations and guidelines.

(c) Derivative classification. Derivative classification markings shall be applied to information that is in substance the same as information that is already classified, in accordance with Executive Order 12356, Section 2–1, unless it is determined through inquiries made to the originators of the classified information or other appropriate persons that the paraphrasing, restating, or summarizing of the classified information obviates the need for its classification, in which case the information shall be issued as unclassified or shall be marked appropriately. After verifying the current level of classification so far as practicable, paper copies of such derivatively classified information shall be marked so as to indicate:

(1) The source of the original classification;
(2) The identity of the Commission employee originating the derivatively classified document;
(3) The dates or events for declassification or review for declassification indicated on the classified source material; and
(4) Any additional authorized markings appearing on the source material.

(d) Handling. All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive
such documents, they shall be turned over to the Administrative Officer and
secured, unopened, in the combination safe located in the Commission offices
until the Executive Director or his designee is available. Under no circum-
stances shall classified materials that cannot be delivered to the Execu-
tive Director or his designee be stored other than in the designated safe.

(e) Reproduction. Reproduction of
classified material shall take place
only in accordance with Executive
Order 12356, its implementing direc-
tives, and any limitations imposed by
the originator. Should copies be made,
they are subject to the same controls
as the original document. Records
showing the number and distribution
of copies shall be maintained, where re-
quired by the Executive Order, by the
Administrative Officer and the log
stored with the original documents.
These measures shall not restrict re-
production for the purposes of manda-
tory review.

(f) Storage. All classified documents
shall be stored in the combination safe
located in the Commission’s offices.
The combination shall be changed as
required by ISOO Directive No. 1, dated
June 23, 1982. The combination shall be
known only to the Executive Director
and his designees with the appropriate
security clearance.

(g) Employee education. All employees
who have been granted a security
clearance and who have occasion to
handle classified materials shall be ad-
vised of handling, reproduction, and
storage procedures and shall be re-
quired to review Executive Order 12356
and appropriate ISOO directives. This
shall be effected by a memorandum to
all affected employees at the time
these procedures are implemented. New
employees will be instructed in proce-
dures as they enter employment with
the Commission.

(h) Agency terminology. The use of the
terms Top Secret, Secret, and Confiden-
tial shall be limited to materials classi-
ﬁed for national security purposes.

[44 FR 55381, Sept. 26, 1979, as amended at 47
FR 50489, Dec. 10, 1982, 48 FR 44834, Sept. 30,
1983]
skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (‘TDD’s), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant’s name and address and describes the agency’s alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) Major life activities includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(3) Qualified handicapped person is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §550.140.

amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-516, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 550.104–550.109 [Reserved]

§ 550.110 Self-evaluation.
(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:
(1) A description of areas examined and any problems identified, and
(2) A description of any modifications made.

§ 550.111 Notice.
The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 550.112–550.129 [Reserved]

§ 550.130 General prohibitions against discrimination.
(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—
(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of
administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 550.131–550.139 [Reserved]

§ 550.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 550.141–550.148 [Reserved]

§ 550.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §550.150, no qualified handicapped person shall, because the agency’s facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 550.150 Program accessibility: Existing facilities.

(a) General. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §550.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) Methods. The agency may comply with the requirements of this section
§ 550.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 550.152–550.159 [Reserved]

§ 550.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD’s) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) Time period for compliance. The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency’s facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]
Marine Mammal Commission

§ 550.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The General Counsel for the Commission shall be responsible for coordinating implementation of this section. Complaints may be sent to the General Counsel for the Commission, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

1. Findings of fact and conclusions of law;
2. A description of a remedy for each violation found;
3. A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §550.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant,
he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.


§§ 550.171–550.999 [Reserved]

PART 560—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

Sec.
560.1 Purpose and scope.
560.2 Definitions.
560.3 Open meetings.
560.4 Notice of meetings.
560.5 Closed meetings.
560.6 Procedures for closing meetings.
560.7 Recordkeeping requirements.
560.8 Public availability of records.

Authority: 5 U.S.C. 552b(g).

Source: 50 FR 2571, Jan. 17, 1985, unless otherwise noted.

§ 560.1 Purpose and scope.

This part contains the regulations of the Marine Mammal Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Marine Mammal Commission that the public is entitled to the fullest practicable information regarding its decision making processes. The provisions of this part set forth the basic responsibilities of the Commission with regard to this policy and offer guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of section 552b.

§ 560.2 Definitions.

For purposes of this part, the term—Administrative Officer means the Administrative Officer of the Marine Mammal Commission.

Commission means the Marine Mammal Commission, a collegial body established under 16 U.S.C. 1401 that functions as a unit and is composed of three individual members, each of whom is appointed by the President, by and with the advice and consent of the Senate.

Commissioner means an individual who is a member of the Marine Mammal Commission.

Executive Director means the Executive Director of the Marine Mammal Commission.

General Counsel means the General Counsel of the Marine Mammal Commission.

Meeting means the deliberations of at least a majority of the members of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include an individual Commissioner’s consideration of official Commission business circulated in writing for disposition either by notation or by separate, sequential consideration, and deliberations on whether to:

1. Hold a meeting with less than 7 days notice, as provided in § 560.4(d) of this part;

2. Change the subject matter of a publicly announced meeting or the determination of the Commission to open or close a meeting or portions thereof to public observation, as provided in § 560.4(e) of this part;

3. Change the time or place of an announced meeting, as provided in § 560.4(f) of this part;

4. Close a meeting or portions of a meeting, as provided in § 560.5 of this part; or

5. Withhold from disclosure information pertaining to a meeting or portions of a meeting, as provided in § 560.5 of this part.

Public observation means attendance by one or more members of the public at a meeting of the Commission, but does not include participation in the meeting.
§ 560.5  Closed meetings.

(a) A meeting or portions thereof may be closed, and information pertaining to such meeting or portions
§ 560.6  Procedures for closing meetings.

(a) A meeting or portions thereof may be closed and information pertaining to such meeting or portions thereof may be withheld under § 560.5 of this part only when a majority of the members of the Commission vote to take such action.
(b) A separate vote of the members of the Commission shall be taken with respect to each meeting or portion thereof proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed, so long as each meeting or portion thereof in such series involves the same particular matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each participating Commission member shall be recorded, and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Commission close that portion of the meeting for any of the reasons referred to in §560.5(a) (5), (6) or (7) of this part. Upon the request of a Commissioner, a recorded vote shall be taken whether to close such meeting or a portion thereof.

(d) Before the Commission may hold a meeting that is closed, in whole or part, a certification shall be obtained from the General Counsel that, in his or her opinion, the meeting may properly be closed. The certification shall be in writing and shall state each applicable exemptive provision from §560.5(a) of this part.

(e) Within one day of a vote taken pursuant to this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each Commissioner.

(f) In the case of the closure of a meeting or portions thereof, the Commission shall make publicly available within one day of the vote on such action a full written explanation of the reasons for the closing together with a list of all persons expected to attend the meeting and their affiliation.

§ 560.7 Recordkeeping requirements.

(a) Except as otherwise provided in this section, the Commission shall maintain either a complete transcript or electronic recording of the proceedings of each meeting, whether opened or closed.

(b) In the case of either a meeting or portions of a meeting closed to the public pursuant to §560.5(a) (8) or (10) of this part, the Commission shall maintain a complete transcript, an electronic recording, or a set of minutes of the proceedings. If minutes are maintained, they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons for which such actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

§ 560.8 Public availability of records.

(a) The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information which may be withheld under §560.5 of this part.

(b) The transcript, electronic recordings or minutes of a meeting shall be made available for public review as soon as practicable after each meeting at the Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006.

(c) Copies of the transcript, a transcription of the electronic recording, or the minutes of a meeting shall be furnished at cost to any person upon written request. Written requests should be addressed to the Administrative Officer, Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006.
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected
Material Approved for Incorporation by Reference

(Revised as of October 1, 2001)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

50 CFR (PARTS 200–599)
NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

AOAC International (Association of Official Analytical Chemists)
481 N. Frederick Ave., Suite 500, Gaithersburg, MD 20877-2407
Telephone: (301) 924-7077

United States Geological Survey
Map Sales, Box 25286, Denver, CO 80225
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<td>Added; eff. 9–17–01 through 9–17–06</td>
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