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Title 50—Wildlife and Fisheries

(This book contains part 600 to 659)

Part

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CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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

SOURCE: 61 FR 32540, June 24, 1996, unless otherwise noted.

Subpart A—General

§ 600.5 Purpose and scope.

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

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

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 65 FR 31443, May 18, 2000]

§ 600.10 Definitions.

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

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

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

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

Aggregate or summary form means confidential data structured in such a way that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

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

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

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

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

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

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

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

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

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

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

Authorized officer means:

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

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

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

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

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

Automatic reel means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel electrically or hydraulically.

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

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

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

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

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

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

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

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

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

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

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

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

Center means one of the five NMFS Fisheries Science Centers.

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

Coast Guard Commander means one of the commanding officers of the Coast Guard units specified in Table 1 of § 600.502, or a designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exempted educational activity means an activity, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by part 635 or chapter VI of this title, but that is authorized by the appropriate Director or Regional Administrator for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by part 635 or chapter VI of this title, but that are authorized under an exempted fishing permit (EFP). These regulations refer exclusively to exempted fishing. References in part 635 of this title and elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

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

Fish means:

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

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

Fishery means:

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

(2) Any fishing for such stocks.

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

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

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

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

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

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

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

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

(1) Fishing; or

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

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

Foreign fishing means fishing by a foreign fishing vessel.

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

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

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

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

Gillnet means a panel of netting, suspended vertically in the water by floats

along the top and weights along the bottom, to entangle fish that attempt to pass through it.

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

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

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

Handgear means handline, harpoon, or rod and reel.

Hand harvest means harvesting by hand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Owner, with respect to any vessel, means:

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

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

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

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

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

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

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

Pot means trap.

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

Predominately means, with respect to fishing in a fishery, that more fishing on a stock or stocks of fish covered by the FMP occurs, or would occur in the absence of regulations, within or beyond the EEZ than occurs in the aggregate within the boundaries of all states off the coasts of which the fishery is conducted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson-Stevens Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish or invertebrates for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

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

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

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

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

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

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

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

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

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

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as

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

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

Secretary means the Secretary of Commerce or a designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The enforcement of regulations implementing the FMP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[61 FR 32540, June 24, 1996, as amended at 62 FR 14646, Mar. 27, 1997; 62 FR 66551, Dec. 19, 1997; 63 FR 7073, 7075, Feb. 12, 1998; 64 FR 4036, Jan. 27, 1999; 64 FR 29133, May 28, 1999; 64 FR 67516, Dec. 2, 1999; 67 FR 2375, Jan. 17, 2002; 67 FR 64312, Oct. 18, 2002; 69 FR 30240, May 27, 2004]

§ 600.15 Other acronyms.

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

(2) *ATCA*–Atlantic Tunas Convention Act

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

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

(5) DAH—estimated domestic annual harvest

(6) DAP—estimated domestic annual processing

(7) EIS—environmental impact statement

(8) EY—equilibrium yield

(9) FMP—fishery management plan

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

(11) JVP—joint venture processing

(12) MSY—maximum sustainable yield

(13) PMP—preliminary FMP

(14) TAC—total allowable catch

(15) TALFF—total allowable level of foreign fishing

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

(2) CZMA—Coastal Zone Management Act

(3) ESA—Endangered Species Act

(4) FACA—Federal Advisory Committee Act

(5) FOIA—Freedom of Information Act

(6) FLSA—Fair Labor Standards Act

(7) MMPA—Marine Mammal Protection Act

(8) MPRSA—Marine Protection, Research, and Sanctuaries Act
(9) NEPA—National Environmental Policy Act
(10) PA—Privacy Act
(11) PRA—Paperwork Reduction Act
(12) RFA—Regulatory Flexibility Act
(c) *Federal agencies.* (1) CEQ—Council on Environmental Quality
(2) DOC—Department of Commerce
(3) DOI—Department of the Interior
(4) DOS—Department of State
(5) EPA—Environmental Protection Agency
(6) FWS—Fish and Wildlife Service
(7) GSA—General Services Administration
(8) NMFS—National Marine Fisheries Service
(9) NOAA—National Oceanic and Atmospheric Administration
(10) OMB—Office of Management and Budget
(11) OPM—Office of Personnel Management
(12) SBA—Small Business Administration
(13) USCG—United States Coast Guard

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

Subpart B—Regional Fishery Management Councils

§ 600.105 Intercouncil boundaries.

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

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

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

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

§ 600.110 Intercouncil fisheries.

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

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

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

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

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

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

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

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

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

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

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

§ 600.120 Employment practices.

(a) Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications. Employment actions must be free from discrimination based on race, religion, color, national origin, sex, age, disability, reprisal, sexual orientation, status as a parent, or on any additional bases protected by applicable Federal, state, or local law.

(b) The annual pay rates for Council staff positions shall be consistent with the pay rates established for General Schedule Federal employees as set forth in 5 U.S.C. 5332, and the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434). The Councils have the discretion to adjust pay rates and pay increases based on cost of living (COLA) differentials in their geographic locations. COLA adjustments in pay rates and pay increases may be provided for staff members whose post of duty is located in Alaska, Hawaii, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and Puerto Rico.

(1) No pay adjustment based on geographic location shall exceed the COLA and locality pay adjustments available to Federal employees in the same geographic area.

(2) [Reserved]

(c) Salary increases funded in lieu of life and medical/dental policies are not permitted.

(d) Unused sick leave may be accumulated without limit, or up to a maximum number of days and contribution per day, as specified by the Council in its SOPP. Distributions of accumulated funds for unused sick leave may be made to the employee upon his or her retirement, or to his or her estate upon his or her death, as established by the Council in its SOPP.

(e) Each Council may pay for unused annual leave upon separation, retirement, or death of an employee.

(f) One or more accounts shall be maintained to pay for unused sick or annual leave as authorized under paragraphs (d) and (e) of this section, and will be funded from the Council's annual operating allowances. Councils have the option to deposit funds into these account(s) at the end of the budget period if unobligated balances remain. Interest earned on these account(s) will be maintained in the account(s), along with the principal, for the purpose of payment of unused annual and sick leave only. These account(s), including interest, may be carried over from year to year. Budgeting for accrued leave will be identified in the ''Other'' object class categories section of the SF–424A.

(g) A Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of Commerce's Office of the Assistant General Counsel for Administration, Employment and Labor Law Division. A Council may not contract

for the provision of legal services on a continuing basis.

[66 FR 57886, Nov. 19, 2001]

§ 600.125 Budgeting, funding, and accounting.

(a) Each Council's grant activities are governed by OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), OMB Circular A–122 (Cost Principles for Non-Profit Organizations), 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and other Nonprofit Organizations), and the terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

(b) Councils may not independently enter into agreements, including grants, contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Councils.

(c) Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NMFS Regional Administrator in accordance with applicable Department of Commerce regulations.

[66 FR 57887, Nov. 19, 2001]

§ 600.130 Protection of confidentiality of statistics.

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

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

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

§ 600.135 Meeting procedures.

(a) Public notice of regular meetings of the Council, scientific statistical committee or advisory panels, including the agenda, must be published in the FEDERAL REGISTER on a timely basis, and appropriate news media notice must be given. The published agenda of any regular meeting may not be modified to include additional matters for Council action without public notice, or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency under section 305 (c) of the Magnuson-Stevens Act, in which case public notice shall be given immediately. Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings.

(b) Drafts of emergency public notices must be transmitted to the NMFS Washington Office; recommended at least 5 working days prior to the first day of the emergency meeting. Although notices of, and agendas for, emergency meetings are not required to be published in the Federal Register, notices of emergency meetings must be promptly announced through the appropriate news media.

(c) After notifying local newspapers in the major fishing ports within its region, having included in the notification the time and place of the meeting and the reason for closing any meeting or portion thereof:

(1) A Council, SSC, AP, or FIAC shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.

(2) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.

(3) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns internal administrative

matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, a Council or subsidiary body should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.

(d) Without the notice required by paragraph (c) of this section, a Council, SSC, AP, or FIAC may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting that is closed without notice may not exceed 2 hours.

(e) Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described in paragraph (c) of this section.

(f) Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

(g) A majority of the voting members of any Council constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(h) Decisions of any Council are by majority vote of the voting members present and voting (except for a vote to propose removal of a Council member, see 50 CFR 600.230). Voting by proxy is permitted only pursuant to 50 CFR 600.205 (b). An abstention does not affect the unanimity of a vote.

(i) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal state officials raising federalism issues, may submit a written statement of their reasons for dissent. If any Council member elects to file such a statement, it should be submitted to the Secretary at the same time the majority report is submitted.

[66 FR 57887, Nov. 19, 2001]

§ 600.150 Disposition of records.

(a) Council records must be handled in accordance with NOAA records management office procedures. All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they may not take the original or file copies of records with them.

(b) [Reserved]

[66 FR 57887, Nov. 19, 2001]

§ 600.155 Freedom of Information Act (FOIA) requests.

(a) FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA Official to secure a FOIA number and log into the FOIA system. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information.

(b) FOIA requests will be controlled and documented in the Region. The requests should be forwarded to the NMFS FOIA Officer who will prepare the Form CD–244, ''FOIA Request and Action Record'', with the official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the ''Foreseeable Harm'' Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD–244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

[66 FR 57887, Nov. 19, 2001]

Subpart C—Council Membership

§ 600.205 Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be appointed by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson-Stevens Act.

(b) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to section 302(b)(1)(A) of the Magnuson-Stevens Act, must be a resident of the state and be knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in the fishery resources of the geographic area of concern to the Council.

(c) New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the individual may vote on any issue before the Council. A designee may not name another designee. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

[66 FR 57888, Nov. 19, 2001]

§ 600.210 Terms of Council members.

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

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

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

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

§ 600.215 Council nomination and appointment procedures.

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

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

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

(ii) The Magnuson-Stevens Act also provides for appointment, by the Secretary, of one treaty Indian tribal representative to the Pacific Fishery Management Council (Pacific Council). To fill that seat, the Secretary solicits written nominations from the heads of governments of those Indian Tribes with federally recognized fishing rights from the States of California, Oregon,

Washington, or Idaho. The list of nominees must contain a total of at least three individuals who are knowledgeable and experienced regarding the fishery resources under the authority of the Pacific Council. The Secretary will appoint one tribal Indian representative from this list to the Pacific Council for a term of 3 years and rotate the appointment among the tribes.

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

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

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

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

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

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

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

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

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

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

(4) If, at any time during a term, a member changes residency to another state that is not a constituent state of that Council, or a member appointed to an obligatory seat changes residency to any other state, the member may no longer vote and must resign from the Council. For purposes of this paragraph, a state resident is an individual who maintains his/her principal residence within that constituent state and who, if applicable, pays income taxes to that state and/or to another appropriate jurisdiction within that state.

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat, provided that the resulting

total number of nominees submitted by that governor for the expiring at-large seat is no fewer than three different nominees. When obligatory and at-large seats do not expire concurrently, the Secretary may select from any of the nominees for such obligatory seat and from the nominees for any at-large seat submitted by the Governor of that state, provided that the resulting total number of nominees submitted by that Governor for the expiring seats is no fewer than six. If a total of fewer than six nominees is submitted by the Governor, each of the six will be considered for the expiring obligatory seat, but not for the expiring at-large seat.

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

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

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

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

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

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

(e) *Responsibilities of the Secretary*. (1) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members on the Councils.

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

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

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

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

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

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

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

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

[64 FR 4600, Jan. 29, 1999]

§ 600.220 Oath of office.

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

§ 600.225 Rules of conduct.

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

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

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

(2) No employee of a Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson-Stevens Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

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

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

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

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

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

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

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

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

§ 600.230 Removal.

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

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

§ 600.235 Financial disclosure.

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

Affected individual means an individual who is—

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

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

Council decision means approval of a fishery management plan (FMP) or FMP amendment (including any proposed regulations); request for amendment to regulations implementing an FMP; finding that an emergency exists involving any fishery (including recommendations for responding to the emergency); and comments to the Secretary on FMPs or amendments developed by the Secretary. It does not include a vote by a committee of a Council.

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

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

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

(ii) Stock, equity, or other ownership interests in, or employment with, any company or other entity that provides equipment or other services essential to harvesting, processing, or marketing

activities in any fishery under the jurisdiction of the Council concerned, such as a chandler or a dock operation.

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

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

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

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

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

(3) The Executive Director must, in a timely manner, provide copies of the financial disclosure forms and all updates to the NMFS Regional Administrator for the geographic area concerned, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel for Administration, and the NMFS Office of Sustainable Fisheries. The completed financial interest forms will be kept on file in the office of the NMFS Regional Administrator for the geographic area concerned and at the Council offices, and will be made available for public inspection at such offices during normal office hours. In addition, the forms will be made available at each Council meeting or hearing.

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

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

(2) As used in this section, a Council decision will be considered to have a ''significant and predictable effect on a financial interest'' if there is a close causal link between the decision and

an expected and substantially disproportionate benefit to the financial interest in harvesting, processing, or marketing of any affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, relative to the financial interests of other participants in the same gear type or sector of the fishery. The relative financial interests of the affected individual and other participants will be determined with reference to the most recent fishing year for which information is available. However, for fisheries in which IFQs are assigned, the percentage of IFQs assigned to the affected individual will be dispositive.

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

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

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

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

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

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

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

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

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

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

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

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

(3) At the beginning of each Council meeting, or during a Council meeting at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information.

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

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

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

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

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

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

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

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

[63 FR 64185, Nov. 19, 1998]

§ 600.240 Security assurances.

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

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

§ 600.245 Council member compensation.

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

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

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

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

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

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

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

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

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 66 FR 57888, Nov. 19, 2001]

Subpart D—National Standards

§ 600.305 General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.310 National Standard 1—Optimum Yield.

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

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

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

(1) *Definitions.* (i) ''MSY'' is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions.

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

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

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

parameters of this function are constant and chosen so as to maximize the resulting long-term average yield. In any MSY control rule, a given stock size is associated with a given level of fishing mortality and a given level of potential harvest, where the long-term average of these potential harvests provides an estimate of MSY.

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

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

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

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

(d) *Overfishing*—(1) *Definitions.* (i) ''To overfish'' means to fish at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

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

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

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

overfished. In all cases, status determination criteria must specify both of the following:

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

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

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

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

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

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

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

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

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

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

(i) Has sufficient scientific merit.

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

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

(iv) Is operationally feasible.

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

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

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

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

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

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

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

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

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

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

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

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

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

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

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

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

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

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

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

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

(*3*) The needs of fishing communities;

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

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

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

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

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

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

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

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

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

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

(i) These measures may remain in effect for no more than 180 days, but may be extended for an additional 180 days if the public has had an opportunity to comment on the measures and, in the case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address overfishing on a permanent basis. Such measures, if otherwise in compliance with the provisions of the Magnuson-Stevens Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

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

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

case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery.

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

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

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

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

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

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

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

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

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

(4) *Specification.* (i) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish. However, OY may be expressed as a formula that converts periodic stock assessments into target harvest levels; in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other

measurement; or as an amount of fish taken only in certain areas, in certain seasons, with particular gear, or by a specified amount of fishing effort.

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

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

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

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

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

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

(i) Target reference points, such as OY, should be set safely below limit reference points, such as the catch level associated with the fishing mortality rate or level defined by the status determination criteria. Because it is a target reference point, OY does not constitute an absolute ceiling, but rather a desired result. An FMP must contain conservation and management measures to achieve OY, and provisions for information collection that are designed to determine the degree to which OY is achieved on a continuing basis—that is, to result in a long-term average catch equal to the long-term average OY, while meeting the status determination criteria. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach OY, but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive, or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate national standard 1, because OY was not achieved on a continuing basis.

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

(iii) Criteria used to set target catch levels should be explicitly risk averse, so that greater uncertainty regarding the status or productive capacity of a stock or stock complex corresponds to greater caution in setting target catch levels. Part of the OY may be held as a

reserve to allow for factors such as uncertainties in estimates of stock size and DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

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

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

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

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

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

[63 FR 24229, May 1, 1998]

§ 600.315 National Standard 2—Scientific Information.

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

(b) *FMP development*. The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 600.320(d)(2) and 600.340(b).

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

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

(c) *FMP implementation*. (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest

within state boundaries, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.320 National Standard 3—Management Units.

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

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

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

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

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

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

(ii) *Geographic*—could be an area.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) By referring to treaties or cooperative agreements.

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

§ 600.325 National Standard 4—Allocations.

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

(1) Fair and equitable to all such fishermen.

(2) Reasonably calculated to promote conservation.

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

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

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

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

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

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

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

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

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve

the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

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

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

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

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

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

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

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

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

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures

aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

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

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

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

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

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

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

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

§ 600.335 National Standard 6—Variations and Contingencies.

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

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

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

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

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

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

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

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

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

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

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

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

§ 600.340 National Standard 7—Costs and Benefits.

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

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

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

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

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

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

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

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

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

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

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

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives, including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

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

generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

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

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

§ 600.345 National Standard 8—Communities.

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

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

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

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

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

(3) The term ''fishing community'' means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

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

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

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

(3) To address the sustained participation of fishing communities that will

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

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

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

[63 FR 24234, May 1, 1998]

§ 600.350 National Standard 9—Bycatch.

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

(1) Minimize bycatch; and

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

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

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

(d) *Minimizing bycatch and bycatch mortality.* The priority under this standard is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive. Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses. In their evaluation, the Councils must consider the net benefits to the Nation, which include, but are not limited to:

Negative impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-market values of bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as recreational values; and impacts on other marine organisms. To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils must—

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

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

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

(A) Population effects for the bycatch species.

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

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

(D) Effects on marine mammals and birds.

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

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

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

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

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

(J) Social effects.

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

(4) *Monitor selected management measures.* Effects of implemented measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected

management measures. Where applicable, plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordination of data management for cost efficiency, and avoidance of duplicative effort.

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

[63 FR 24235, May 1, 1998]

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

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

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

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

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

(c) *Safety considerations.* The following is a non-inclusive list of safety considerations that should be considered in evaluating management measures under national standard 10.

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

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

(3) *Limited season and area fisheries.* Fisheries where time constraints for harvesting are a significant factor and with no flexibility for weather, often

called ''derby'' fisheries, can create serious safety problems. To participate fully in such a fishery, fishermen may fish in bad weather and overload their vessel with catch and/or gear. Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes, as discussed in paragraph (e) of this section.

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

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

(1) Setting seasons to avoid hazardous weather.

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

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

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

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

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

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

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

[63 FR 24236, May 1, 1998]

Subpart E—Confidentiality of Statistics

§ 600.405 Types of statistics covered.

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

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

§ 600.410 Collection and maintenance of statistics.

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

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

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

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

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

§ 600.415 Access to statistics.

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

(1) The specific types of data required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.420 Control system.

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

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

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

(3) Provides for safeguarding the data.

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

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

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

§ 600.425 Release of statistics.

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

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

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

Subpart F—Foreign Fishing

§ 600.501 Vessel permits.

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

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

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

(c) *Activity codes.* Permits to fish under this subpart may be issued by the Assistant Administrator for the activities described in this paragraph, but the permits may be modified by regulations of this subpart and by the conditions and restrictions attached to the permit (see paragraphs (e)(1)(v) and (l) of this section). The Assistant Administrator may issue a permit, as appropriate, for one or more of the activity codes listed. Only vessels of nations having a GIFA with the United States may be issued permits for activity codes 1 through 9. A GIFA is not required for a vessel to be issued a permit for activity code 10. The activity codes are described as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The applicant has appointed an agent.

(iv) The applicant has identified a designated representative.

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

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

(3) An approved permit will contain—

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The Assistant Administrator will send proposed additional restrictions to each Nation whose vessels are affected (via the Secretary of State), to the appropriate Councils, and to the Commandant of the Coast Guard. NMFS will, at the same time, publish a document of any significant proposed additional restrictions in the FEDERAL REGISTER. The document will include a summary of the reasons underlying the proposal, and the reasons that any proposed additional restrictions are made effective immediately.

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

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

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

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

§ 600.502 Vessel reports.

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

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

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

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

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

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

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

transmitted prior to the last shift expected to be made in the day and delivered within 24 hours of its transmittal.

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

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

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

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

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

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

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

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

(e) The notices required by this section may be provided for individual or

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

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

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

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

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

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

weekly reports to some other facility of NMFS.

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

TABLE 1 TO § 600.502—ADDRESSES

NMFS regional administrators	NMFS science and research directors	U.S. Coast Guard commanders
Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298.	Director, Northeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water St., Woods Hole, MA 02543–1097.	Commander, Atlantic Area, U.S. Coast Guard, 431 Crawford St., Portsmouth, VA 23704.
Administrator, Southeast Region, National Marine Fisheries Service, 9721 Exec. Center Drive N., St. Petersburg, FL 33702.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149–1003.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York 10004.
Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Blvd. East, Seattle, WA 98112–2097.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501.
Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115–0070.	Commander, Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802.
Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038–0271.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.
Administrator, Pacific Islands Region, National Marine Fisheries Service, NOAA, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.	Director, Pacific Islands Fisheries Science Center, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.

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

Area of responsibility/fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean North of Cape Hatteras	Director, Northeast Science Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Ocean South of Cape Hatteras	Director, Northeast Science Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Tunas, Swordfish, Billfish and Sharks.	Director, Office of Sustainable Fisheries	Commander, Atlantic Area.
Gulf of Mexico and Caribbean Sea	Administrator, Southeast Region	Commander, Atlantic Area.
Pacific Ocean off the States of California, Oregon, and Washington.	Administrator, Northwest Region	Commander, Pacific Area.
North Pacific Ocean and Bering Sea off Alaska.	Administrator, Alaska Region	Commander, Seventeenth Coast Guard District.
Pacific Ocean off Hawaii, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and U.S. Insular Possessions in the Central and Western Pacific.	Administrator, Pacific Islands Region	Commander, Fourteenth Coast Guard District.

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

U.S. Coast Guard communications station	Radiotelephone		
	IRCS	Channel [1]	GMT time
Boston	NMF	A-E	2330–1100.
		B,C	All.
		D	1100–2330.
		E	(On request).
CAMSLANT Chesapeake (Portsmouth, VA)	NMN	A	2330–1100.
		B,C	All.

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

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

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

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998; 64 FR 39020, July 21, 1999; 69 FR 8341, Feb. 24, 2004]

§ 600.503 Vessel and gear identification.

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

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

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

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

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

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

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

(iii) Has a radio buoy.

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

(2) The operator of each FFV must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal

end with: (see paragraphs (c)(1)(i) through (c)(1)(iii) of this section).

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

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

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

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

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

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

§ 600.504 Facilitation of enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Failure of an FFV's operator to stop the vessel when directed to do so by an authorized officer using VHF-FM radiotelephone (channel 16), 2182 kHz (SSB) radiotelephone (where required),

message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this subpart.

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the FFV not less than 0.70 m (2 ft 3 inches) nor more than 0.80 m (2 ft 7 inches) apart, not less than 40 mm (2.5 inches) in diameter, and must extend not less than 1.20 m (3 ft 11 inches) above the top of the bulwark.

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

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

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

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

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

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

§ 600.505 Prohibitions.

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

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

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

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

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

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

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

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

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

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

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

(11) Violate any provision of the applicable GIFA;

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

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

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

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling, unless the observer has stated that sampling will not occur; or tamper with, destroy, or

discard an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

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

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

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

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

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

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

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

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

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

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

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

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

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

(29) Attempt to do any of the foregoing.

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

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

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

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

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

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

§ 600.506 Observers.

(a) *General*. To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson-Stevens Act, the appropriate Regional Administrator or Science and Research Director (see table 2 to § 600.502) may assign U.S. observers to FFV's. Except as provided for in section 201(h)(2) of the Magnuson-Stevens Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

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

intending to fish within the EEZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) At least one working radar.

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

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

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

(5) Life jackets equal or greater in number to the total number of persons aboard the vessel. Life jackets must be stowed in readily accessible and plainly marked positions throughout the vessel, and maintained in a state of good repair.

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

(7) At least one VHF-FM radio with a functioning channel 16 (156.8 mHz),

International Distress, Safety and Calling Frequency, and one functioning AM radio (SSB-Single Side Band) capable of operating at 2182 kHz (SSB). Radios will be maintained in a radio room, chartroom, or other suitable location.

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

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

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

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

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

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

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

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

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

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional Administrator or Science and Research Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(h) *Supplementary observer payment*—(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 600.518(b)(2). Billing schedules will be specified by the terms of the contract between NOAA and the contractors. Billings for supplementary observer coverage will be approved by the appropriate Regional Administrator or Science and Research Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country, except as provided for by the Assistant Administrator. All bills must be paid within 10 working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (h)(4) of this section and § 600.518(d).

(2) *Contractor costs.* The costs charged for supplementary observer coverage to

the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels an additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers.

(ii) The costs of post-certification training required by paragraph (j)(2) of this section.

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional Administrator or Science and Research Director will designate posts of duty for supplementary observers.

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials.

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs*. The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by section 201(i)(4) of the Magnuson-Stevens Act, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer.

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional Administrator or Science and Research Director according to the requirements of the fishery to which the supplementary observer will be deployed.

(iii) The costs associated with communications with supplementary observers for transmission of data and routine messages.

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data.

(v) The costs for data editing and entry.

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer.

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation*. Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(i) *Supplementary observer contractors*—(1) *Contractor eligibility*. Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services.

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers.

(iii) Billing schedules and billings to the owners and operators of foreign

fishing vessels for further transmission to the designated representative of the appropriate foreign nation.

(iv) All data on costs.

(j) *Supplementary observers—certification, training*—(1) *Certification*. The appropriate Regional Administrator or Science and Research Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training*. Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional Administrator or Science and Research Director as equivalent to that received by persons used as observers by NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202–735 (as provided by the contractor).

(k) *Supplementary observer certification suspension or revocation*. (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified in paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202–735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the USCG or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer, in writing, of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7074, 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999]

§ 600.507 Recordkeeping.

(a) *General*. The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged.

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the EEZ, for 3 years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the 3 years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson-Stevens Act.

(b) *Communications log*. The owner and operator of each FFV must record in a separate communications log, at the time of transmittal, the time and content of each notification made under § 600.504.

(c) *Transfer log*. Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (Activity Code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product, including quantities transferred or offloaded outside the EEZ. The operator must record in the log within 12 hours of the completion of the transfer:

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed.

(2) The product weight, by species and product (use species and product codes), of all fish transferred, to the nearest 0.01 mt.

(3) The name, IRCS, and permit number of both the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log*. (1) The owner or operator of each FFV authorized to catch fish (Activity Code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged. The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see table 2 to § 600.502) in which the FFV is engaged according to this section and in the format specified in the instructions provided with the permit or other format authorized under paragraph (i) of this section. Daily effort entries are required for each day the vessel conducts fishing operations within the EEZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a state. Each page of log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

(2) The owner or operator of each FFV authorized to catch fish (Activity Code 1) and that delivers all catches to a processing vessel, must maintain only ''SECTION ONE-EFFORT'', of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraphs (f) and (g) of this section.

(e) *Daily fishing log—contents*. The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged, and be completed according to the format and instructions provided with the permit or other format authorized under paragraph (i) of this section.

(1) ''SECTION ONE-EFFORT'' must contain on a daily basis—

(i) A consecutive page number, beginning with the first day the vessel started fishing operations within the EEZ and continuing throughout the log.

(ii) The date (based on GMT).

(iii) The FFV's name.

(iv) The FFV's IRCS.

(v) The FFV's U.S. permit number.

(vi) The FFV's noon (1200 GMT) position in geographic coordinates.

(vii) The master or operator's signature or title.

(2) ''SECTION ONE-EFFORT'' must contain, for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the calendar year.

(ii) The fishing area in which the trawl or set was completed.

(iii) The gear type.

(iv) The time the gear was set.

(v) The position of the set.

(vi) The course of the set.

(vii) The sea depth.

(viii) The depth of the set.

(ix) The duration of the set.

(x) The hauling time.

(xi) The position of the haul.

(xii) The number of pots or longline units (where applicable).

(xiii) The average number of hooks per longline unit (where applicable).

(xiv) The trawl speed (where applicable).

(xv) The mesh size of the trawl's codend (where applicable).

(xvi) The estimated total weight of the catch for the trawl of set, to at least the nearest metric ton round weight.

(3) ''SECTION TWO-CATCH'' must contain, for each trawl or set—

(i) The consecutive set or trawl number from ''SECTION ONE''.

(ii) The catch of each allocated species or species group to at least the nearest 0.1 mt round weight.

(iii) The prohibited species catch to at least the nearest 0.1 mt round weight or by number, as required by the regulations for the fishery in which the FFV is engaged.

(iv) The species code of each marine mammal caught and its condition when released.

(4) ''SECTION TWO-CATCH'' must contain, on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught.

(ii) For each allocated species—the amount, to at least the nearest 0.1 mt, and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch by fishing area; the daily catch for all fishing areas; and the cumulative total catch.

(iii) For the total catch of allocated species—the amount to at least the nearest 0.1 mt and the daily disposition, daily total catch by fishing area, daily total catch for all fishing areas, and cumulative total catch.

(iv) The catch by fishing area, daily total, and cumulative total of each prohibited species.

(5) ''SECTION THREE—PRODUCTION'' must contain, on a daily basis, for each allocated species caught and product produced—

(i) The product by species code and product type.

(ii) The daily product recovery rate of each species and product.

(iii) The daily total product produced by species to at least the nearest 0.01 mt.

(iv) The cumulative total of each product to at least the nearest 0.01 mt.

(v) The cumulative amount of product transferred.

(vi) The balance of product remaining aboard the FFV.

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest 0.01 mt.

(viii) Transferred amount and balance of fishmeal and fish oil aboard to at least the nearest 0.01 mt.

(f) *Daily consolidated fishing or joint venture log.* The operator of each FFV that receives unsorted, unprocessed fish from foreign catching vessels (Activity Code 2) for processing or receives U.S.-harvested fish from U.S. fishing vessels in a joint venture (Activity Code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. or foreign fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged. This log is separate and in addition to the log required by paragraph (d) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged, on a daily and cumulative basis, according to this section and in the format specified in the instructions provided with the permit or other format authorized under paragraph (i) of this section. Receipts of fish caught outside the EEZ must be included. Each page of the log may contain entries pertaining to only one day's fishing operations.

(g) *Daily joint venture log—contents.* Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged, and be completed according to the format and instructions provided with the permit or other format authorized under paragraph (i) of this section.

(1) ''SECTION ONE-EFFORT'' must contain, on a daily basis, that information required in paragraph (e)(1) of this section.

(2) ''SECTION ONE-EFFORT'' must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the calendar year.

(ii) The name of the U.S. fishing vessel or the name and IRCS of the foreign fishing vessel the codend was received from.

(iii) The fishing area where the codend was received.

(iv) The time the codend was received.

(v) The position the codend was received.

(vi) The estimated weight of the codend to at least the nearest metric ton round weight.

(3) ''SECTION TWO-CATCH'' must contain, for each codend received—

(i) The consecutive codend number from ''SECTION ONE''.

(ii) The receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to at least the nearest 0.1 mt round weight.

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to at least the nearest 0.1 mt round weight.

(iv) The species code of each marine mammal received and its condition when released.

(4) ''SECTION TWO-CATCH'' must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received.

(ii) The daily disposition, as described in paragraph (g)(3)(ii) of this section, daily total, and cumulative total receipts of each authorized species or species groups.

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups.

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (g)(3)(iii) of this section.

(5) ''SECTION THREE—PRODUCTION'' must contain, on a daily basis, for each authorized species or species group received and product produced, that information required in paragraph (e)(5) of this section.

(h) *Daily log maintenance.* The logs required by paragraphs (e) through (g) of this section must be maintained separately for each fishery (see table 2 to § 600.502).

(1) The effort section (all of ''SECTION ONE'') of the daily logs must be updated within 2 hours of the hauling or receipt time. The catch or receipt by trawl or set (''SECTION TWO'') must be entered within 12 hours of the hauling or receipt time. The daily and cumulative total catch or receipts (''SECTION TWO'') and the production portion (''SECTION THREE'') of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition ''C'' or ''M'') must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights of discarded or returned fish (disposition ''D'' or ''R'') must be based on the most accurate method available to the vessel, either actual count, scale round weight, or estimated deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed 5 percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink, with corrections to be accomplished by lining out and rewriting, rather than erasure.

(i) Alternative log formats. As an alternative to the use of the specific formats provided, a Nation may submit a proposed log format for FFV's of that Nation for a general type of fishery operation in a fishery (i.e., joint venture operations) to the appropriate Regional Administrator and the USCG commander (see tables 1 and 2 to § 600.502). With the agreement of the USCG commander, the Regional Administrator may authorize the use of that log format for vessels of the requesting Nation.

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

§ 600.508 Fishing operations.

(a) *Catching*. Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the FFV is engaged. Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting*. Each FFV authorized for Activity Codes 1 through 6 may scout for fish. Scouting may be conducted only in the fisheries area authorized by the scouting vessel's permit and under such other circumstances as may be designated in this subpart or the permit.

(c) *Processing*. Each FFV with Activity Code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that Nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under Activity Code 4, and under such other circumstances as may be designated in this subpart or the permit.

(d) *Support*. Each FFV with Activity Codes 1, 2, 3, 5, or 8 may support other permitted FFV's. Each FFV with Activity Codes 4 or 6 may support U.S. vessels. Support operations may be conducted only in the fisheries areas authorized by the supporting vessel's permit, and under such other circumstances as may be designated in this subpart or the permit.

(e) *Joint ventures*. Each FFV with Activity Code 4 in addition to Activity Codes 1 or 2 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the EEZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels, despite closures under § 600.511(a).

(f) *Internal waters*. For FFV's authorized under section 306(c) of the Magnuson-Stevens Act:

(1) Each FFV may engage in fish processing and support of U.S. fishing vessels within the internal waters of that state in compliance with terms and conditions set by the authorizing Governor.

(2) The owner or operator of each FFV must submit weekly reports on the amount of fish received from vessels of the United States and the location(s) where such fish were harvested.

(i) Reports must include:

(A) Vessel identification information for the FFV.

(B) Date of each receipt of fish.

(C) Amount of fish received, by species.

(D) Location(s) from which the fish received were harvested and the name and official number of the vessel of the United States that harvested the fish.

(ii) Owners or operators of FFV's processing fish in internal waters under the provisions of this paragraph (f) must request, from the Regional Administrator, the requirements regarding timing and submission of the reports, at least 15 days prior to the first receipt of fish from a vessel of the United States. The Regional Administrator shall stipulate the timing and submission requirements in writing.

(g) *Transshipping*. Each FFV with Activity Code 1, 2, 3, 4, 5, 6, 7, 8, or 10 may transship in accordance with this subpart and the vessel's permit.

[61 FR 32540, June 24, 1996, as amended at 62 FR 27183, May 19, 1997; 62 FR 34397, June 26, 1997; 64 FR 39020, July 21, 1999]

§ 600.509 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch of fish received as soon as possible and return all prohibited species and species parts to the sea immediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged. All prohibited species must be recorded in the daily fishing log and other fishing logs as specified by the regulations for the fishery in which the FFV is engaged.

(c) All species of fish that an FFV has not been specifically allocated or authorized under this subpart to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught and retained in violation of this section.

§ 600.510 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The operator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing, as required by the regulations for the fishery in which the FFV is engaged.

(b) *Gear conflicts.* The operator of each FFV that is involved in a conflict or that retrieves the gear of another vessel must immediately notify the appropriate USCG commander identified in tables 1 and 2 to § 600.502 and request disposal instructions. Each report must include:

(1) The name of the reporting vessel.

(2) A description of the incident and articles retrieved, including the amount, type of gear, condition, and identification markings.

(3) The location of the incident.

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the EEZ may not dump overboard, jettison or otherwise discard any article or substance that may interfere with other fishing vessels or gear, or that may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate USCG commander or other authorized officer. These articles and substances include, but are not limited to, fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear in the EEZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the EEZ, the vessel operator must immediately report the incident to the appropriate USCG Commander indicated in tables 1 and 2 to § 600.502, and give the information required in paragraph (b) of this section.

§ 600.511 Fishery closure procedures.

(a) Activity Codes 1 and 2 for a fishery are automatically canceled in the following cases, unless otherwise specified by regulations specific to a fishery, when—

(1) The OY for any allocated species or species group has been reached in that fishery;

(2) The TALFF or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 600.518(b)(2) is not established and maintained.

(b) Activity Code 4 is automatically canceled when—

(1) The OY for a species with a JVP amount is reached;

(2) The JVP amount for a species or species group is reached; or

(3) The letter of credit required in § 600.518(b)(2) is not established and maintained.

(c) *Notification.* (1) The Regional Administrator is authorized to close a fishery on behalf of NMFS. The Regional Administrator will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each Nation and the owners and operators of all FFV's of that Nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation.* Vessel activity reports, U.S. surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts may be initiated by the designated representative of each Nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration.* Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 600.518(b)(2) is reestablished.

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

§ 600.512 Scientific research.

(a) *Scientific research activity.* Persons planning to conduct scientific research activities in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Administrator, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required under any other applicable law. If the Regional Administrator, Director, or designee, after review of a research plan, determines that it does not constitute scientific research activity, but rather fishing, the Regional Administrator, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports.* Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

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

§ 600.513 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, and §§ 600.10, 600.504(a)(1), and 600.505 (as applicable). Such vessels may conduct recreational fishing within the EEZ and within the boundaries of a state. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person aboard any foreign vessel conducting recreational fishing must comply with any Federal laws or regulations applicable to the domestic fishery while in the EEZ, and any state

laws or regulations applicable while in state waters.

§ 600.514 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and state statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws that implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

§ 600.515 Interpretation of 16 U.S.C. 1857(4).

Section 307(4) of the Magnuson-Stevens Act prohibits any fishing vessel other than a vessel of the United States (foreign fishing vessel) from operating in the EEZ if all of the fishing gear on board the vessel is not stowed in compliance with that section ''unless such vessel is authorized to engage in fishing in the area in which the vessel is operating.'' If such a vessel has a permit authorization that is limited to fishing activities other than catching, taking or harvesting (such as support, scouting or processing activities), it must have all of its fishing gear stowed at all times while it is in the EEZ. If such a vessel has a permit authorization to engage in catching, taking or harvesting activities, but such authorization is limited to a specific area within the EEZ, and/or to a specific period of time, the vessel must have all of its fishing gear stowed while it is in the EEZ, except when it is in the specific area authorized, and/or during the specific period of time authorized.

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

§ 600.516 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the OY of such fishery that will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published in the FEDERAL REGISTER. Adjustments to those numbers will be published in the FEDERAL REGISTER upon occasion or as directed by regulations implementing FMPs. For current apportionments, contact the appropriate Regional Administrator or the Director.

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

§ 600.517 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 600.518 Fee schedule for foreign fishing.

(a) *Permit application fees*. Each vessel permit application submitted under § 600.501 must be accompanied by a fee. The amount of the fee will be determined in accordance with the procedures for determining administrative

costs of each special product or service contained in the NOAA Finance Handbook, which is available upon request from the International Fisheries Division (see address at § 600.501(d)(1)). The fee is specified with the application form. At the time the application is submitted, a check for the fees, drawn on a U.S. bank, payable to the order of ''Department of Commerce, NOAA,'' must be sent to the Assistant Administrator. The permit fee payment must be accompanied by a list of the vessels for which the payment is made. In the case of applications for permits authorizing activity code 10, the permit application fee will be waived if the applicant provides satisfactory documentary proof to the Assistant Administrator that the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation. The documentation presented (e.g., copy of foreign fishing regulations applicable to vessels of the United States) must clearly exempt vessels of the United States from such a fee.

(b) *Poundage fees*—(1) *Rates*. If a Nation chooses to accept an allocation, poundage fees must be paid at the rate specified in the following table.

TABLE—SPECIES AND POUNDAGE FEES

[Dollars per metric ton]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	277.96
2. Herring, Atlantic	25.75
3. Herring, River	49.59
4. Mackerel, Atlantic	64.76
5. Other finfish	45.48
6. Squid, *Illex*	97.56
7. Squid, *Loligo*	321.68

(2) *Method of payment of poundage fees and observer fees*. (i) If a Nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocation at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the observer fees required by paragraph (c) of this section. The L/C must—

(A) Be irrevocable.

(B) Be with a bank subscribing to ICC Pub. 290.

(C) Designate ''Department of Commerce, NOAA'' as beneficiary;

(D) Allow partial withdrawals.

(E) Be confirmed by a U.S. bank.

(ii) The customer must pay all commissions, transmission, and service charges. No fishing will be allowed until the L/C is established, and authorized written notice of its issuance is provided to the Assistant Administrator.

(3) *Assessment of poundage fees*. Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Administrator will reconcile catch figures with each country following the procedures of § 600.511(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Administrator will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Administrator during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Observer fees*. The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a L/C as prescribed in § 600.518(b)(2). During the fiscal year, payment will be withdrawn from the L/C as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(d) *Financial assurances*. (1) A foreign nation, or the owners and operators of certain vessels of that foreign nation,

may be required by the Assistant Administrator to provide financial assurances. Such assurances may be required if—

(i) Civil and criminal penalties assessed against fishing vessels of the Nation have not effectively deterred violations;

(ii) Vessels of that Nation have engaged in fishing in the EEZ without proper authorization to conduct such activities;

(iii) The Nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(iv) Enforcement of Magnuson-Stevens Act civil or criminal judgments in the courts of a foreign nation is unattainable.

(2) The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. Government.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999; 66 FR 28132, May 22, 2001]

§ 600.520 Northwest Atlantic Ocean fishery.

(a) *Purpose*. Sections 600.520 and 600.525 regulate all foreign fishing conducted under a GIFA within the EEZ in the Atlantic Ocean north of 35°00′ N. lat.

(b) *Authorized fishery*—(1) *Allocations*. Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *Time and area restrictions*. (i) Fishing, including processing, scouting, and support of foreign or U.S. vessels, is prohibited south of 35°00′ N. lat., and north and east of a line beginning at the shore at 44°22′ N. lat., 67°52′ W. long. and intersecting the boundary of the EEZ at 44°11′12″ N. lat., 67°16′46″ W. long.

(ii) The Regional Administrator will consult with the Council prior to giving notice of any area or time restriction. NMFS will also consult with the USCG if the restriction is proposed to reduce gear conflicts. If NMFS determines after such consultation that the restriction appears to be appropriate, NMFS will publish the proposed restriction in the FEDERAL REGISTER, together with a summary of the information on which the restriction is based. Following a 30-day comment period, NMFS will publish a final action.

(iii) The Regional Administrator may rescind any restriction if he/she determines that the basis for the restriction no longer exists.

(iv) Any notice of restriction shall operate as a condition imposed on the permit issued to the foreign vessels involved in the fishery.

(3) *TALFF*. The TALFFs for the fisheries of the Northwest Atlantic Ocean are published in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Administrator.

(4) *Species definitions*. The category ''other finfish'' used in TALFFs and in allocations includes all species except:

(i) The other allocated species, namely: Short-finned squid, long-finned squid, Atlantic herring, Atlantic mackerel, river herring (includes alewife, blueback herring, and hickory shad), and butterfish.

(ii) The prohibited species, namely: American plaice, American shad, Atlantic cod, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, ocean pout, pollock, red hake, scup, sea turtles, sharks (except dogfish), silver hake, spot, striped bass, summer flounder, tilefish, yellowtail flounder, weakfish, white hake, windowpane flounder, winter flounder, witch flounder, Continental Shelf fishery resources, and other invertebrates (except nonallocated squids).

(5) *Closures*. The taking of any species for which a Nation has an allocation is permitted, provided that:

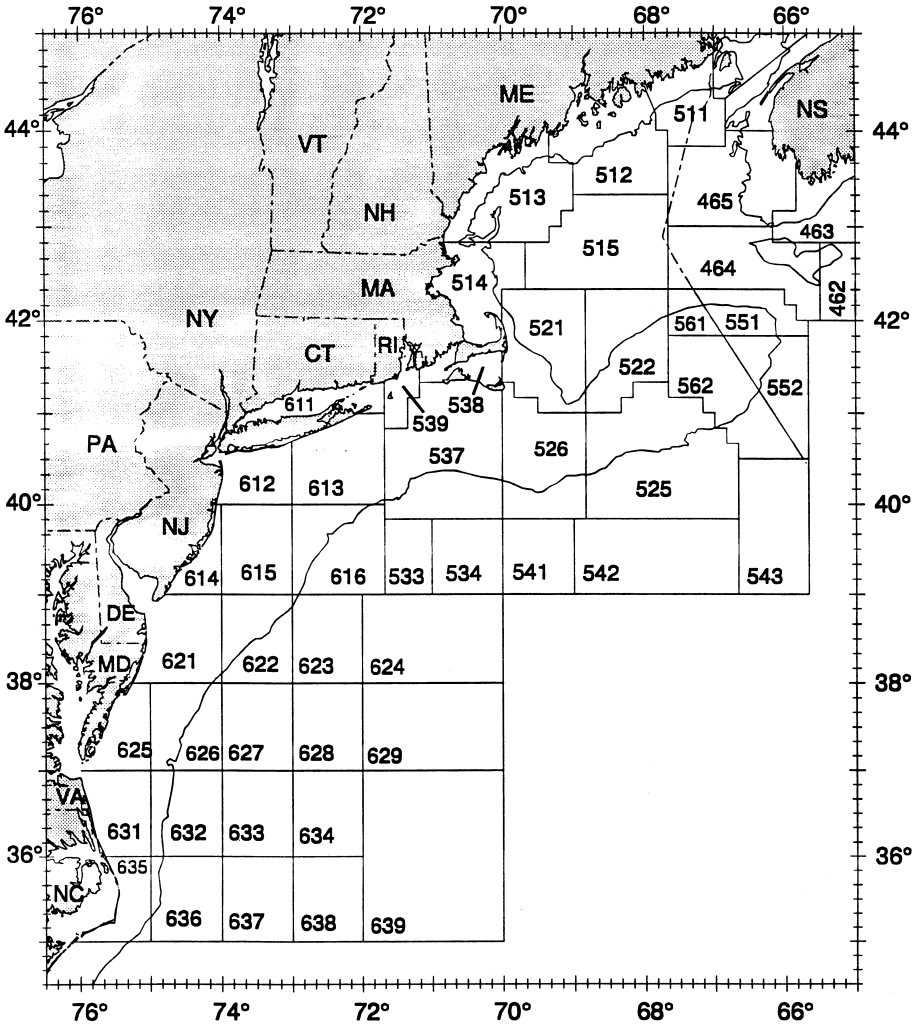
(i) The vessels of the foreign nation have not caught the allocation of that Nation for any species or species group (e.g., ''other finfish''). When vessels of a foreign nation have caught an applicable allocation of any species, all further fishing other than scouting, processing, or support by vessels of that Nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to ensure that the reaching of an allocation for one species does not result in the premature closing of a Nation's fishery for other allocated species.

(ii) The fishery has not been closed for other reasons under § 600.511.

(6) *Allocation utilization.* Foreign fishing vessels may elect to retain or discard allocated species; however, the computation of allocation utilization and fee refunds will be based on the total quantity of that species that was caught. Prohibited species must always be returned to the sea as required under § 600.509.

(c) *Fishing areas.* For the purposes of the Northwest Atlantic Ocean fishery, fishing areas are that portion of the EEZ shown inside the boundaries of the ''three digit statistical areas'' described in Figure 1 to this section.

Figure 1 to § 600.520--Fishing Areas of the Northwest Atlantic Ocean Fisheries



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

§ 600.525 Applicability of Subpart F to Canadian Albacore Fishing Vessels off the West Coast.

Fishing by vessels of Canada under the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges is regulated only under this section and § 600.530 of this subpart F, and is exempt from any other requirements of this subpart F. Regulations governing fishing by U.S. vessels in waters under the fisheries jurisdiction of the Canada more than 12 nautical miles from the baseline from which the territorial sea is measured are found at §§ 300.170–300.176 of chapter II of this title.

[69 FR 31535, June 4, 2004]

§ 600.530 Pacific albacore fishery.

(a) *Purpose and scope.* This section regulates fishing by Canadian vessels under the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002. Notwithstanding any other provision of this subpart F, fishing vessels of Canada may be authorized to fish in waters under the fisheries jurisdiction of the United States more than 12 nautical miles from the baseline from which the territorial sea is measured in accordance with the Treaty and this section, pursuant to Public Law 108–219 (118 Stat. 616; 16 U.S.C. 1821 note).

(b) *Definitions.* In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act and § 600.10, the terms used in this subpart have the following meanings:

Fishing under the Treaty as amended in 2002 means to engage in fishing for albacore tuna in waters under the fisheries jurisdiction of the United States seaward of 12 nautical miles from the baseline from which the territorial sea is measured.

Regional Administrator means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Reporting Office means the office designated by the Regional Administrator to take hail-in and hail-out reports from U.S. and Canadian vessel operators.

Treaty means the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

(c) *Vessel list.* A Canadian vessel is not eligible to fish for albacore in U.S. waters under the Treaty as amended in 2002 unless the vessel is on the list provided to NMFS by the Government of Canada of vessels authorized by Canada to fish under the Treaty as amended in 2002.

(d) *Vessel identification.* A Canadian vessel fishing under the Treaty as amended in 2002 must clearly display its Canadian vessel registration number followed by the letter C in the same height and size as the numerals, consistent with Canadian vessel marking requirements.

(e) *Hail-in reports.* The operator of a Canadian Vessel eligible to fish for albacore in U.S. waters under the Treaty as amended in 2002 must file a hail-in report with the Reporting Office at least 24 hours prior to beginning any such fishing.

(f) *Hail-out Reports.* The operator of a Canadian vessel that has been fishing in U.S. waters under the Treaty as amended in 2002 must file a hail-out report with the Reporting Office at least 24 hours prior to exiting from U.S. waters.

(g) *Prohibitions.* It is prohibited for the operator of a Canadian vessel to engage in fishing in U.S. waters if the vessel:

(1) Is not on the vessel list in paragraph (c) of this section;

(2) Has not filed a hail-in report to advise of an intent to fish under the Treaty as amended in 2002 prior to engaging in such fishing; or

(3) Is not clearly marked in accordance with paragraph (d) of this section.

[69 FR 31535, June 4, 2004]

Subpart G—Preemption of State Authority Under Section 306(b)

§ 600.605 General policy.

It is the policy of the Secretary that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 600.610 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of state management authority over a fishery are:

(1) The fishing in a fishery that is covered by an FMP implemented under the Magnuson-Stevens Act is engaged in predominately within the EEZ and beyond such zone.

(2) A state has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such FMP.

(b) Whether fishing is engaged in ''predominately'' within or beyond the EEZ will be determined after consideration of relevant factors, including but not limited to, the catch (based on numbers, value, or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period, and in light of historical patterns of the distribution of catch or fishing effort for such stock or stocks of fish.

(c) Whether relevant effects are substantial will be determined after consideration of the magnitude of such actual or potential effects. Relevant to this determination are various factors, including but not limited to, the proportion of the fishery (stock or stocks of fish and fishing for such stocks) that is subject to the effects of a particular state's action or omission, the characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery, and the similarity or dissimilarity between the goals, objectives, or policies of the state's action or omission and the management goals or objectives specified in the FMP for the fishery or between the state and Federal conservation and management measures of the fishery.

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

§ 600.615 Commencement of proceedings.

(a) *Notice of proposed preemption.* (1) If a proceeding under this part is deemed necessary, the Administrator must issue a notice of proposed preemption to the Attorney General of the State or States concerned. The notice will contain:

(i) A recital of the legal authority and jurisdiction for instituting the proceeding.

(ii) A concise statement of the § 600.610 factual findings for Federal preemption upon which the notice is based.

(iii) The time, place, and date of the hearing.

(2) The notice of proposed preemption will also be published in the FEDERAL REGISTER. This notification may be combined with any notice of proposed rulemaking published under paragraph (d)(1) of this section.

(b) *Response.* The state will have the opportunity to respond in writing to the notice of proposed preemption.

(c) *Amendment.* The Administrator may, at any time prior to the Secretary's decision, withdraw the notice of proposed preemption. Upon motion of either party before the record is closed, the administrative law judge may amend the notice of proposed preemption.

(d) *Proposed regulations*—(1) *In general.* If additional regulations are required to govern fishing within the boundaries of a state, the Administrator may publish proposed regulations in the FEDERAL REGISTER concurrently with issuing the notification indicated in paragraph (a) of this section.

(2) *Emergency actions.* Nothing in this section will prevent the Secretary from taking emergency action under section 305(c) of the Magnuson-Stevens Act.

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

§ 600.620 Rules pertaining to the hearing.

(a) The civil procedure rules of the NOAA currently set forth in 15 CFR

part 904, subpart C (or as subsequently amended), apply to the proceeding after its commencement by service of notice (pursuant to § 600.615) and prior to the Secretary's decision (§ 600.625), except that the following sections will not apply:

(1) 15 CFR 904.201 (Definitions);

(2) 15 CFR 904.206(a)(1) (Duties and powers of Judge); and

(3) 15 CFR 904.272 (Administrative review of decision).

(b) *Additional duties and powers of judge*—(1) *Time periods*. The administrative law judge is authorized to modify all time periods pertaining to the course of the hearing (under §§ 600.615 and 600.620) to expedite the proceedings, upon application and appropriate showing of need or emergency circumstances by a party.

(2) *Intervention*. Intervention by persons not parties is not allowed.

§ 600.625 Secretary's decision.

(a) The Secretary will, on the basis of the hearing, record the administrative law judge's recommended decision:

(1) Accept or reject any of the findings or conclusions of the administrative law judge and decide whether the factual findings exist for Federal preemption of a state's authority within its boundaries (other than in its internal waters) with respect to the fishery in question;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Remand the case to the administrative law judge for further proceedings as may be appropriate, along with a statement of reasons for the remand.

(b) *Notification*. (1) If the factual findings for Federal preemption are determined to exist, the Secretary will notify in writing the Attorney General of that state and the appropriate Council(s) of the preemption of that state's authority. The Secretary will also direct the Administrator to promulgate appropriate regulations proposed under § 600.615(d) and otherwise to begin regulating the fishery within the state's boundaries (other than in its internal waters).

(2) If the factual findings for Federal preemption are determined not to exist, the Secretary will notify, in writing, the Attorney General of the state and the appropriate Council(s) of that determination. The Secretary will also direct the Administrator to issue a notice withdrawing any regulations proposed under § 600.615(d).

§ 600.630 Application for reinstatement of state authority.

(a) *Application or notice*. (1) At any time after the promulgation of regulations under § 600.625(b)(1) to regulate a fishery within a state's boundaries, the affected state may apply to the Secretary for reinstatement of state authority. The Secretary may also serve upon such state a notice of intent to terminate such Federal regulation. A state's application must include a clear and concise statement of:

(i) The action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the FMP; or

(ii) Any changed circumstances that affect the relationship of the state's action or omission to take action to the carrying out of the FMP (including any amendment to such plan); and

(iii) Any laws, regulations, or other materials that the state believes support the application.

(2) Any such application received by the Secretary or notice issued to the State will be published in the FEDERAL REGISTER.

(b) *Informal response*. The Secretary has sole discretion to accept or reject the application or response. If the Secretary accepts the application or rejects any responses and finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

(c) *Hearing*. The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 600.620. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended

decision to the Secretary. If the Secretary, upon consideration of the state's application or any response to the notice published under § 600.630(a)(2), the hearing record, the recommended decision, and any other relevant materials finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

Subpart H—General Provisions for Domestic Fisheries

§ 600.705 Relation to other laws.

(a) *General.* Persons affected by these regulations should be aware that other Federal and state statutes and regulations may apply to their activities. Vessel operators may wish to refer to USCG regulations found in the Code of Federal Regulations title 33—Navigation and Navigable Waters and 46—Shipping; 15 CFR part 904, subpart D—Permit Sanctions and Denials; and title 43—Public Lands (in regard to marine sanctuaries).

(b) *State responsibilities.* Certain responsibilities relating to data collection and enforcement may be performed by authorized state personnel under a state/Federal agreement for data collection and a tripartite agreement among the state, the USCG, and the Secretary for enforcement.

(c) *Submarine cables.* Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to the submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(d) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth in part 229 of this title.

(e) *Halibut fishing.* Fishing for halibut is governed by regulations of the International Pacific Halibut Commission set forth at part 300 of this title.

(f) *Marine sanctuaries.* All fishing activity, regardless of species sought, is prohibited under 15 CFR part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 600.710 Permits.

Regulations pertaining to permits required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.715 Recordkeeping and reporting.

Regulations pertaining to records and reports required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.720 Vessel and gear identification.

Regulations pertaining to special vessel and gear markings required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.725 General prohibitions.

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

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, or export, any fish or parts thereof taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NOAA and/or any regulation or permit issued under the Magnuson-Stevens Act.

(b) Transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel, while such vessel is in the EEZ, unless the foreign fishing vessel has been issued a permit under section 204 of the

Magnuson-Stevens Act, which authorizes the receipt by such vessel of U.S.-harvested fish.

(c) Fail to comply immediately with enforcement and boarding procedures specified in § 600.730.

(d) Refuse to allow an authorized officer to board a fishing vessel or to enter areas of custody for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(e) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel or aircraft.

(f) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(g) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson-Stevens Act or any other statute administered by NOAA.

(h) Resist a lawful arrest for any act prohibited under the Magnuson-Stevens Act or any other statute administered by NOAA.

(i) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, offer of sale, possession, transport, import, export, or transfer of any fish, or attempts to do any of the above.

(j) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(k) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson-Stevens Act or any other statute administered by NOAA.

(l) Fail to report catches as required while fishing pursuant to an exempted fishing permit.

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

(n) Trade, barter, or sell; or attempt to trade, barter, or sell fish possessed or retained while fishing pursuant to an authorization for an exempted educational activity.

(o) Harass or sexually harass an authorized officer or an observer.

(p) Fail to show proof of passing the USCG Commercial Fishing Vessel Safety Examination or the alternate NMFS safety equipment examination, or fail to maintain the vessel safety conditions necessary to pass the examination, when required by NMFS pursuant to § 600.746.

(q) Fail to display a Commercial Fishing Vessel Safety Examination decal or a valid certificate of compliance or inspection pursuant to § 600.746.

(r) Fail to provide to an observer, a NMFS employee, or a designated observer provider information that has been requested pursuant to § 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 600.746.

(s) Fish without an observer when the vessel is required to carry an observer.

(t) Assault, oppose, impede, intimidate, or interfere with a NMFS-approved observer.

(u)(1) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(2) Tamper with or destroy samples or equipment.

(v) The use of any gear or participation in a fishery not on the following list of authorized fisheries and gear is prohibited after December 1, 1999. A fish, regardless whether targeted, may be retained only if it is taken within a listed fishery, is taken with a gear authorized for that fishery, and is taken in conformance with all other applicable regulations. Listed gear can only be used in a manner that is consistent with existing laws and regulations. The list of fisheries and authorized gear does not, in any way, alter or supersede

any definitions or regulations contained elsewhere in this chapter. A person or vessel is prohibited from engaging in fishing or employing fishing gear when such fishing gear is prohibited or restricted by regulation under an FMP or other applicable law. However, after December 1, 1999, an individual fisherman may notify the appropriate Council, or the Director, in the case of Atlantic highly migratory species, of the intent to use a gear or participate in a fishery not already on the list. Ninety days after such notification, the individual may use the gear or participate in that fishery unless regulatory action is taken to prohibit the use of the gear or participate in the fishery (*e.g.*, through emergency or interim regulations). The list of authorized fisheries and gear is as follows:

Fishery	Authorized gear types
I. New England Fishery Management Council (NEFMC)	
1. Atlantic Sea Scallop Fishery (FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Hand harvest fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
2. Iceland Scallop Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
3. Atlantic Salmon Fishery (FMP)	No harvest or possession in the EEZ.
4. Striped Bass Fishery (Non-FMP)	No harvest or possession in the EEZ.
5. Northeast (NE) Multispecies Fishery (FMP):	
A. NE multispecies sink gillnet fishery	A. Gillnet.
B. North Atlantic bottom trawl fishery	B. Trawl.
C. Groundfish hook and line fishery	C. Longline, handline, rod and reel.
D. Mixed species trap and pot fishery	D. Trap, pot.
E. Dredge fishery	E. Dredge.
F. Seine fishery	F. Seine.
G. Recreational fishery	G. Rod and reel, handline, spear.
6. American Lobster Fishery (FMP):	
A. Lobster pot and trap fishery	A. Pot, trap.
B. North Atlantic bottom trawl fishery	B. Trawl.
C. Dredge fishery	C. Dredge.
D. Hand harvest fishery	D. Hand harvest.
E. Gillnet fishery	E. Gillnet.
F. Recreational fishery	F. Pot, trap, hand harvest.
7. Atlantic Herring Fishery (FMP):	
A. Trawl fishery	A. Trawl.
B. Purse seine fishery	B. Purse seine.
C. Gillnet fishery	C. Gillnet.
D. Herring pair trawl fishery	D. Pair trawl.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Hook and line, gillnet.
8. Spiny Dogfish Fishery (FMP jointly managed by MAFMC and NEFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
9. Atlantic Bluefish Fishery (FMP managed by MAFMC):	
A. Pelagic longline and hook and line fishery	A. Longline, handline.
B. Seine fishery	B. Purse seine, seine.
C. Mixed species pot and trap fishery	C. Pot, trap.
D. Bluefish, croaker, flounder trawl fishery	D. Trawl.
E. Gillnet fishery	E. Gillnet.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot, spear.
10. Atlantic Mackerel, Squid and Butterfish Fishery (FMP managed by the MAFMC):	
A. Mackerel, squid, and butterfish trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline and hook-and-line fishery	C. Longline, handline, rod and reel.
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot and trap fishery	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Dip net fishery	G. Dip net.

Fishery	Authorized gear types
H. Bandit gear fishery	H. Bandit gear.
I. Recreational fishery	I. Rod and reel, handline, pot, spear.
11. Surf Clam and Ocean Quahog Fishery (FMP managed by the MAFMC):	
A. Commercial fishery	A. Dredge, hand harvest.
B. Recreational fishery	B. Hand harvest.
12. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line fishery	D. Hook and line.
E. Recreational fishery	E. Hook and line, snagging, cast nets.
13. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line, spear.
14. Atlantic Mussel and Sea Urchin Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Hand harvest fishery	B. Hand harvest.
C. Recreational fishery	C. Hand harvest.
15. Atlantic Skate Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Hook-and-line fishery	C. Longline and handline.
D. Dredge fishery	D. Dredge.
E. Recreational fishery	E. Rod and reel.
16. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
17. Northern Shrimp Fishery (Non-FMP):	
A. Shrimp trawl fishery	A. Trawl.
B. Shrimp pot fishery	B. Pot.
18. Monkfish Fishery (FMP jointly managed by NEFMC and MAFMC):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline fishery	C. Longline.
D. Dredge fishery	D. Dredge.
E. Trap and pot fishery	E. Trap, pot.
F. Recreational fishery	F. Rod and reel, spear.
19. Summer Flounder, Scup, Black Sea Bass Fishery (FMP managed by MAFMC):	
A. Trawl fishery	A. Trawl.
B. Longline and hook and line fishery	B. Longline, handline.
C. Mixed species pot and trap fishery	C. Pot, trap.
D. Gillnet fishery	D. Gillnet.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Rod and reel, handline, pot, trap, spear.
20. Hagfish Fishery (Non-FMP)	Trap, pot.
21. Tautog Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Pot and trap fishery	B. Pot, trap.
C. Rod and reel, hook and line fishery	C. Rod and reel, handline, hook and line.
D. Trawl fishery	D. Trawl.
E. Spear fishery	E. Spear.
F. Fyke net fishery	F. Fyke net.
G. Recreational fishery	G. Rod and reel, hook and line, handline, spear.
22. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net, pot, trap, dip net, bully net, snare.
23. Commercial Fishery (Non-FMP)	Trawl, pot, trap, gillnet, pound net, dredge, seine, handline, longline, hook and line, rod and reel, hand harvest, purse seine, spear, bandit gear, powerhead, dip net, bully net, snare, cast net, barrier net, slurp gun, allowable chemicals.
24. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
II. Mid-Atlantic Fishery Management Council (MAFMC)	
1. Summer Flounder, Scup, Black Sea Bass Fishery (FMP):	
A. Trawl fishery	A. Trawl.
B. Pelagic longline and hook and line fishery	B. Longline, handline, rod and reel.
C. Mixed species pot and trap fishery	C. Pot, trap.

Fishery	Authorized gear types
D. Gillnet fishery	D. Gillnet.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Rod and reel, handline, pot, trap, spear.
2. Atlantic Bluefish Fishery (FMP):	
A. Bluefish, croaker, and flounder trawl fishery	A. Trawl.
B. Pelagic longline and hook and line fishery	B. Longline, handline, bandit gear, rod and reel.
C. Mixed species pot and trap fishery	C. Pot, trap.
D. Gillnet fishery	D. Gillnet.
E. Seine fishery	E. Purse seine, seine.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot, spear.
3. Atlantic Mackerel, Squid, and Butterfish Fishery (FMP):	
A. Mackerel, squid, and butterfish trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline and hook-and-line fishery	C. Longline, handline, rod and reel.
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot and trap fishery	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Dip net fishery	G. Dip net.
H. Bandit gear fishery	H. Bandit gear.
I. Recreational fishery	I. Rod and reel, handline, pot, spear.
4. Surf Clam and Ocean Quahog Fishery (FMP):	
A. Commercial fishery	A. Dredge, hand harvest.
B. Recreational fishery	B. Hand harvest.
5. Atlantic Sea Scallop Fishery (FMP managed by NEFMC):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Hand harvest fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
6. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line fishery	D. Hook and line.
E. Recreational fishery	E. Hook and line, snagging, cast nets.
7. Striped Bass Fishery (Non-FMP)	No harvest or possession in the EEZ.
8. Northern Shrimp Trawl Fishery (Non-FMP)	Trawl.
9. American Lobster Fishery (FMP managed by NEFMC):	
A. Pot and trap fishery	A. Pot, trap.
B. Hand harvest fishery	B. Hand harvest.
C. Trawl fishery	C. Trawl.
D. Dredge fishery	D. Dredge.
E. Gillnet fishery	E. Gillnet.
F. Recreational fishery	F. Pot, trap, hand harvest.
10. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line, rod and reel.
B. Recreational fishery	B. Hook and line, spear.
11. Whelk Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Pot and trap fishery	B. Pot, trap.
C. Dredge	C. Dredge.
D. Pound net, gillnet, seine	D. Pound net, gillnet, seine.
E. Recreational fishery	E. Hand harvest.
12. Monkfish Fishery (FMP jointly managed by NEFMC and MAFMC):	
A. Trawl fishery	A. Trawl.
B. Longline fishery	B. Longline, rod and reel.
C. Gillnet fishery	C. Gillnet.
D. Dredge fishery	D. Dredge.
E. Trap and pot fishery	E. Trap and pot.
F. Recreational fishery	F. Rod and reel, spear.
13. Tilefish Fishery (Non-FMP):	
A. Groundfish hook-and-line fishery	A. Longline, handline, rod and fishery reel.
B. Trawl fishery	B. Trawl.
C. Recreational fishery	C. Rod and reel, spear.
14. Spiny Dogfish Fishery (FMP jointly managed by MAFMC and NEFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
15. Tautog Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.

Fishery	Authorized gear types
B. Pot and trap fishery	B. Pot, trap.
C. Rod and reel, hook and line handline fishery	C. Rod and reel, hook and line, handline.
D. Trawl fishery	D. Trawl.
E. Spear fishery	E. Spear.
F. Fyke net fishery	F. Fyke net.
G. Recreational fishery	G. Rod and reel, handline, hook and line, spear.
16. Coastal Gillnet Fishery (Non-FMP)	Gillnet
17. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net.
18. NE Multispecies Fishery (FMP managed by NEFMC):	
A. NE multispecies sink gillnet fishery	A. Gillnet.
B. North Atlantic bottom trawl fishery	B. Trawl.
C. Groundfish hook and line	C. Longline, handline, rod and fishery reel.
D. Mixed species trap and pot fishery	D. Trap, pot.
E. Dredge fishery	E. Dredge.
F. Seine fishery	F. Seine.
G. Recreational fishery	G. Rod and reel, handline, spear.
19. Atlantic Skate Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Hook-and-line fishery	C. Longline and handline.
D. Dredge fishery	D. Dredge.
E. Recreational fishery	E. Rod and reel.
20. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
21. Atlantic Herring Fishery (FMP managed by the NEFMC):	
A. Trawl fishery	A. Trawl.
B. Purse seine fishery	B. Purse seine.
C. Gillnet fishery	C. Gillnet.
D. Herring pair trawl fishery	D. Pair trawl.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Hook and line, gillnet.
22. South Atlantic Snapper-Grouper Fishery (FMP managed by the SAFMC):	
A. Commercial fishery	A. Longline, rod and reel, bandit gear, handline, spear, powerhead.
B. Black sea bass trap and pot fishery	B. Pot, trap.
C. Wreckfish fishery	C. Rod and reel, bandit gear, handline.
D. Recreational fishery	D. Handline, rod and reel, bandit gear, spear, powerhead.
23. South Atlantic Coastal Migratory Pelagics Fishery (FMP managed by the SAFMC):	
A. Commercial Spanish mackerel fishery	A. Handline, rod and reel, bandit gear, gillnet, cast net.
B. Commercial king mackerel fishery	B. Handline, rod and reel, bandit gear.
C. Other commercial coastal migratory pelagics fishery	C. Longline, handline, rod and reel, bandit gear.
D. Recreational fishery	D. Bandit gear, rod and reel, handline, spear.
24. Calico Scallops Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Dredge fishery	B. Dredge.
C. Recreational fishery	C. Hand harvest.
25. Sargassum Fishery (Non-FMP)	Trawl.
26. South Atlantic Shrimp Fishery (FMP)	Trawl.
27. Commercial Fishery (Non-FMP)	Trawl, pot, trap, gillnet, pound net, dredge, seine, handline, longline, hook and line, rod and reel, spear.
28. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
III. South Atlantic Fishery Management Council	
1. Golden Crab Fishery (FMP)	Trap.
2. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
3. Atlantic Red Drum Fishery (FMP)	No harvest or possession in the EEZ.
4. Coral and Coral Reef Fishery (FMP):	
A. Octocoral commercial fishery	Hand harvest.
B. Live rock aquaculture fishery	Hand harvest.
5. South Atlantic Shrimp Fishery (FMP)	Trawl.

Fishery	Authorized gear types
6. South Atlantic Snapper-Grouper Fishery (FMP):	
A. Commercial fishery	A. Longline, rod and reel, bandit gear, handline, spear, powerhead.
B. Black sea bass pot fishery	B. Pot.
C. Wreckfish fishery	C. Rod and reel, bandit gear, handline.
D. Recreational fishery	D. Handline, rod and reel, bandit gear, spear, powerhead.
7. South Atlantic Spiny Lobster Fishery (FMP):	
A. Commercial fishery	A. Trap, pot, dip net, bully net, snare, hand harvest.
B. Recreational fishery	B. Trap, pot, dip net, bully net, snare, hand harvest.
8. South Atlantic Coastal Migratory Pelagics Fishery (FMP):	
A. Commercial Spanish mackerel fishery	A. Handline, rod and reel, bandit gear, gillnet, cast net.
B. Commercial king mackerel fishery	B. Handline, rod and reel, bandit gear.
C. Other commercial coastal migratory pelagics fishery	C. Longline, handline, rod and reel, bandit gear.
D. Recreational fishery	D. Bandit gear, rod and reel, handline, spear.
9. Spiny Dogfish Fishery (FMP jointly managed by NEFMC and SAFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear, bandit gear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
10. Smooth Dogfish Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear, bandit gear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
11. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line	D. Hook and line fishery.
E. Recreational fishery	E. Hook and line, snagging, cast nets.
12. Atlantic Mackerel, Squid, and Butterfish Trawl Fishery (Non-FMP)	Trawl.
13. Bait Fisheries (Non-FMP)	Purse seine.
14. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line, spear.
15. Whelk Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Pot and trap fishery	B. Pot, trap.
C. Dredge fishery	C. Dredge.
D. Recreational fishery	D. Hand harvest.
16. Marine Life Aquarium Fishery (Non-FMP)	Dip net, slurp gun, barrier net, drop net, allowable chemical, trap, pot, trawl.
17. Calico Scallop Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Recreational fishery	C. Hand harvest.
18. Summer Flounder Fishery (FMP managed by MAFMC):	
A. Commercial fishery	A. Trawl, longline, handline, rod and reel, pot, trap, gillnet, dredge.
B. Recreational fishery	B. Rod and reel, handline, pot, trap, spear.
19. Bluefish, Croaker, and Flounder Trawl and Gillnet Fishery (Bluefish FMP managed by MAFMC).	Trawl, gillnet.
20. Commercial Fishery (Non-FMP)	Trawl, gillnet, longline, handline, hook and line, rod and reel, bandit gear, cast net, pot, trap, lampara net, spear.
21. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net.
22. Sargassum Fishery (Non-FMP)	Trawl.
23. Octopus Fishery (Non-FMP)	Trap, pot.
24. Dolphin/wahoo fishery (FMP)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
IV. Gulf of Mexico Fishery Management Council	
1. Gulf of Mexico Red Drum Fishery (FMP)	No harvest or possession in the EEZ.
2. Coral Reef Fishery (FMP):	

Fishery	Authorized gear types
A. Commercial fishery	A. Hand harvest.
B. Recreational fishery	B. Hand harvest.
3. Gulf of Mexico Reef Fish Fishery (FMP):	
A. Snapper-Grouper reef fish longline and hook and line fishery	A. Longline, handline, bandit gear, rod and reel, buoy gear.
B. Other commercial fishery	B. Spear, powerhead, cast net, trawl.
C. Recreational fishery	C. Spear, powerhead, bandit gear, handline, rod reel, cast net.
4. Gulf of Mexico Shrimp Fishery (FMP):	
A. Gulf of Mexico commercial fishery	A. Trawl butterfly net, skimmer, cast net.
B. Recreational fishery	B. Trawl.
5. Gulf of Mexico Coastal Migratory Pelagics Fishery (FMP):	
A. Large pelagics longline fishery	A. Longline.
B. King/Spanish mackerel gillnet fishery	B. Gillnet.
C. Pelagic hook and line fishery	C. Bandit gear, handline, rod and reel.
D. Pelagic species purse seine fishery	D. Purse seine.
E. Recreational fishery	E. Bandit gear, handline, rod and reel, spear.
Gulf of Mexico Spiny Lobster Fishery (FMP):	
A. Commercial fishery	A. Trap, pot, dip net, bully net, hoop net, trawl, snare, hand harvest.
C. Recreational fishery	C. Dip net, bully net, pot, trap, snare, hand harvest.
6. Stone Crab Fishery (FMP):	
A. Trap and pot fishery	A. Trap, pot
B. Recreational fishery	B. Trap, pot, hand harvest.
7. Blue Crab Fishery (Non-FMP)	Trap, pot.
8. Golden Crab Fishery (Non-FMP)	Trap.
9. Mullet Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Pair trawl fishery	C. Pair trawl.
D. Cast net fishery	D. Cast net.
E. Recreational fishery	E. Bandit gear, handline, rod and reel, spear, cast net.
10. Inshore Coastal Gillnet Fishery (Non-FMP)	Gillnet.
11. Octopus Fishery (Non-FMP)	Trap, pot.
12. Marine Life Aquarium Fishery (Non-FMP)	Dip net, slurp gun, barrier net, drop net, allowable chemical, trap, pot, trawl.
13. Coastal Herring Trawl Fishery (Non-FMP)	Trawl.
14. Butterfish Trawl Fishery (Non-FMP)	Trawl.
15. Gulf of Mexico Groundfish (Non-FMP):	
A. Commercial fishery	A. Trawl, purse seine, gillnet.
B. Recreational fishery	B. Hook and line, rod and reel, spear.
16. Gulf of Mexico Menhaden Purse Seine Fishery (Non-FMP)	Purse seine.
17. Sardine Purse Seine Fishery (Non-FMP)	Purse seine.
18. Oyster Fishery (Non-FMP)	Dredge, tongs.
19. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, lampara net, spear.
20. Recreational Fishery (Non-FMP)	Bandit gear, handline, rod and reel, spear, bully net, gillnet, dip net, longline, powerhead, seine, slurp gun, trap, trawl, harpoon, cast net, hoop net, hook and line, hand harvest.
V. Caribbean Fishery Management Council	
1. Caribbean Spiny Lobster Fishery (FMP):	
A. Trap/pot fishery	A. Trap/pot.
B. Dip net fishery	B. Dip net.
C. Hand harvest fishery	C. Hand harvest, snare.
D. Recreational fishery	D. Dip net, trap, pot.
2. Caribbean Shallow Water Reef Fish Fishery (FMP):	
A. Longline/hook and line fishery	A. Longline, hook and line.
B. Trap/pot fishery	B. Trap, pot.
C. Recreational fishery	C. Dip net, handline, rod and reel, slurp gun, spear.
3. Coral and Reef Resources Fishery (FMP):	
A. Commercial fishery	A. Dip net, slurp gun.
B. Recreational fishery	B. Dip net, slurp gun, hand harvest.
4. Queen Conch Fishery (FMP):	
A. Commercial fishery	A. Hand harvest.
B. Recreational fishery	B. Hand harvest.
5. Caribbean Pelagics Fishery (Non-FMP):	
A. Pelagics drift gillnet fishery	A. Gillnet.
B. Pelagics longline/hook and line fishery	B. Longline/hook and line.
C. Recreational fishery	C. Spear, handline, longline, rod and reel.
6. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.

Fishery	Authorized gear types
7. Recreational Fishery (Non-FMP)	Rod and reel, hook and line, spear, powerhead, handline, hand harvest, cast net.
VI. Pacific Fishery Management Council	
1. Washington, Oregon, and California Salmon Fisheries (FMP):	
A. Salmon set gillnet fishery	A. Gillnet.
B. Salmon hook and line fishery	B. Hook and line.
C. Trawl fishery	C. Trawl.
D. Recreational fishery	D. Rod and reel.
2. West Coast Groundfish Fisheries (FMP):	
A. Pacific groundfish trawl fishery	A. Trawl.
B. Set gillnet fishery	B. Gillnet.
C. Groundfish longline and setline fishery	C. Longline.
D. Groundfish handline and hook and line fishery	D. Handline, hook and line.
E. Groundfish pot and trap fishery	E. Pot, trap.
F. Recreational fishery	F. Rod and reel, handline, spear, hook and line.
3. Northern Anchovy Fishery (FMP)	Purse seine, lampara net.
4. Angel Shark, White Croaker, California Halibut, White Sea Bass, Pacific Mackerel Large-Mesh Set Net Fishery (Non-FMP).	Gillnet.
5. Thresher Shark and Swordfish Drift Gillnet Fishery (Non-FMP)	Gillnet.
6. Pacific Shrimp and Prawn Fishery (Non-FMP):	
A. Pot and trap fishery	A. Pot, trap.
B. Trawl fishery	B. Trawl.
7. Lobster and Rock Crab Pot and Trap Fishery (Non-FMP)	Pot, trap.
8. Pacific Halibut Fishery (Non-FMP):	
A. Longline and setline fishery	A. Longline.
B. Hook-and-line fishery	B. Hook and line.
9. California Halibut Trawl and Trammel Net Fishery	Trawl, trammel net.
10. Shark and Bonito Longline and Setline Fishery (Non-FMP)	Longline.
11. Dungeness Crab Pot and Trap Fishery (Non-FMP)	Pot, trap.
12. Hagfish Pot and Trap Fishery (Non-FMP)	Pot, trap.
13. Pacific Albacore and Other Tuna Hook-and-line Fishery (Non-FMP)	Hook and line.
14. Pacific Swordfish Harpoon Fishery (Non-FMP)	Harpoon.
15. Pacific Scallop Dredge Fishery (Non-FMP)	Dredge.
16. Pacific Yellowfin, Skipjack Tuna, Purse Seine Fishery, (Non-FMP)	Purse seine.
17. Market Squid Fishery (Non-FMP)	Purse seine, dip net.
18. Pacific Sardine, Pacific Mackerel, Pacific Saury, Pacific Bonito, and Jack Mackerel Purse Seine Fishery (Non-FMP).	Purse seine.
19. Finfish and Shellfish Live Trap, Hook-and-line, and Handline Fishery (Non-FMP).	Trap, handline, hook and line.
20. Recreational Fishery (Non-FMP)	Spear, trap, handline, pot, hook and line, rod and reel, hand harvest.
21. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
VII. North Pacific Fishery Management Council	
1. Alaska Scallop Fishery (FMP)	Dredge.
2. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Pot fishery	Pot.
3. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Recreational fishery	Pot.
4. BS and AI Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line, and handline fishery	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. BS and AI pot and trap fishery	D. Pot, trap.
5. BS and AI Groundfish Recreational Fishery (Non-FMP)	Handline, rod and reel, hook and line, pot, trap.
6. Gulf of Alaska (GOA) Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line and handline fishery	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. GOA pot and trap fishery	D. Pot, trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
7. Pacific Halibut Fishery (Non-FMP):	
A. Commercial (IFQ and CDQ)	A. Hook and line.
B. Recreational	B. Single line with no more than 2 hooks attached or spear.
C. Subsistence	C. Setline gear and hand held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jig, and hand-troll gear.

Fishery	Authorized gear types
8. Alaska High Seas Salmon Hook and Line Fishery: (FMP)	Hook and line.
9. Alaska Salmon Fishery (Non-FMP):	
A. Hook-and-line fishery	A. Hook and line.
B. Gillnet fishery	B. Gillnet.
C. Purse seine fishery.	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.
10. Finfish Purse Seine Fishery (Non-FMP)	Purse seine.
11. Octopus/Squid Longline Fishery (Non-FMP)	Longline.
12. Finfish Handline and Hook-and-line Fishery (Non-FMP)	Handline, hook and line.
13. Recreational Fishery (Non-FMP)	Handline, rod and reel, hook line.
14. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
VIII. Western Pacific Fishery Management Council	
1. Western Pacific Crustacean Fishery (FMP)	Trap, hand harvest, hoop net.
2. Western Pacific Crustacean Fishery (Non-FMP):	
A. Commercial fishery	A. Gillnet, hand harvest, hoop net, spear, snare, trap, trawl.
B. Recreational fishery	B. Gillnet, hand harvest, hoop net, spear, snare, trap.
C. Charter fishery	C. Hand harvest, spear.
3. Western Pacific Precious Corals Fishery (FMP):	
A. Tangle net dredge fishery	A. Tangle net dredge.
B. Submersible fishery	B. Submersible.
C. Dive fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
4. Western Pacific Precious Corals Fishery (Non-FMP)	Hand harvest, submersible, tangle net dredge.
5. Western Pacific Bottomfish and Seamount Groundfish Fishery (FMP):	
A. Bottomfish hook-and-line fishery	A. Bandit gear, buoy gear, handline, hook and line, rod and reel, hand harvest.
B. Seamount groundfish fishery	B. Longline, trawl.
C. Bottom longline fishery	C. Longline, hook and line.
D. Trap fishery	D. Trap.
E. Spear fishery	E. Spear, powerhead.
6. Western Pacific Bottomfish and Seamount Groundfish Fishery (Non-FMP):	
A. Commercial fishery	A. Bandit gear, buoy gear, gillnet, handline, hook-and-line, longline, rod and reel, spear, trap.
B. Recreational fishery	B. Bandit gear, buoy gear, Gillnet, handline, hook and line, longline, rod and reel, spear, trap, slurp gun, hand harvest.
C. Charter fishery	C. Bandit gear, buoy gear, handline, hook-and-line, rod and reel, spear.
7. Western Pacific Pelagics Fishery (FMP):	
A. Longline Fisher	A. Longline.
B. Hook and line fishery	B. Bandit gear, buoy gear, handline, hook and line, rod and reel.
C. Purse seine fishery	C. Lampara net, purse seine.
D. Spear fishery	D. Spear, powerhead.
8. Western Pacific Pelagics Fishery (Non-FMP):	
A. Recreational fishery	A. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and real, spear.
B. Commercial fishery	B. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
C. Charter fishery	C. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
9. Western Pacific Coastal Pelagics Fishery (Non-FMP)	Bandit gear, buoy gear, dip net, gillnet, handline, hook and line, hoop net, lampara net, purse seine, rod and reel, spear.
10. Western Pacific Squid and Octopus Fishery (Non-FMP)	Bandit gear, hand harvest, hook and line, rod and reel, spear, trap.
11. Western Pacific Coral Reef Fishery (Non-FMP)	Allowable chemical, barrier net, dip net, gillnet, hand harvest, seine, slurp gun, trap, spear, rod and reel, hook and line.
12. Recreational Fishery (Non-FMP)	Rod and reel, hook and line, handline, hand harvest, spear.
13. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
IX. Secretary of Commerce	
1. Atlantic Highly Migratory Species Fisheries (FMP):	

Fishery	Authorized gear types
A. Swordfish handgear fishery	A. Rod and reel, harpoon, handline, bandit gear, buoy gear.
B. Swordfish recreational fishery	B. Rod and reel, handline.
C. Pelagic longline fishery	C. Longline.
D. Shark gillnet fishery	D. Gillnet
E. Shark bottom longline fishery	E. Longline.
F. Shark handgear fishery	F. Rod and reel, handline, bandit gear.
G. Shark recreational fishery	G. Rod and reel, handline.
H. Tuna purse seine fishery	H. Purse seine.
I. Tuna recreational fishery	I. Speargun gear (for bigeye, albacore, yellowfin, and skipjack tunas only); Rod and reel, handline (all tunas).
J. Tuna handgear fishery	J. Rod and reel, harpoon, handline, bandit gear.
K. Tuna harpoon fishery	K. Harpoon.
L. Atlantic billfish recreational fishery	L. Rod and reel.
2. Commercial Fisheries (Non-FMP)	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine.

(w) Fail to maintain safe conditions for the protection of observers including compliance with all U.S. Coast Guard and other applicable rules, regulations, or statutes applicable to the vessel and which pertain to safe operation of the vessel.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 63 FR 27217; May 18, 1998; 64 FR 4037, Jan. 27, 1999; 64 FR 29134, May 28, 1999; 64 FR 67516, Dec. 2, 1999; 68 FR 18161, Apr. 15, 2003; 68 FR 26230, May 15, 2003; 68 FR 74784, Dec. 24, 2003; 69 FR 30240, May 27, 2004; 70 FR 62080, Oct. 28, 2005; 71 FR 58163, Oct. 2, 2006; 72 FR 61818, Nov. 1, 2007; 73 FR 409, Jan. 3, 2008]

EFFECTIVE DATE NOTE: At 73 FR 54733, Sept. 23, 2008, § 600.725 was amended in the table to paragraph (v) under the heading ''IX. Secretary of Commerce,'' by revising entries 1.I and 2, and adding entry 1.M effective October 23, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 600.725 General prohibitions.

* * * * *

(v)* * *

Fishery	Authorized gear types
* * * * * * *	
IX. Secretary of Commerce	
1. Atlantic Highly Migratory Species Fisheries (FMP):	
* * * * * * *	
I. Tuna recreational fishery	I. Speargun gear (for bigeye, albacore, yellowfin, and skipjack tunas only); Rod and reel, handline (all tunas); greenstick gear (HMS Charter/Headboat Category only).
* * * * * * *	
M. Tuna greenstick fishery	M. Greenstick gear.
2. Commercial Fisheries (NonFMP)	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine, greenstick gear.

* * * * *

§ 600.730 Facilitation of enforcement.

(a) *General*. The operator of, or any other person aboard, any fishing vessel subject to parts 622 through 699 of this chapter must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson-Stevens Act or any other statute administered by NOAA and this chapter.

(b) *Communications*. (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method for communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal ''L'' as the signal to stop. In the International Code of Signals, ''L'' (.–..) means ''you should stop your vessel instantly.'' (Period (.) means a short flash of light; dash (–) means a long flash of light.)

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes prima facie evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding*. The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF-FM, if so equipped.

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his/her party to come aboard.

(3) Except for those vessels with a freeboard of 4 ft (1.2 m) or less, provide a safe ladder, if needed, for the authorized officer and his/her party to come aboard.

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

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

(d) *Signals*. The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal ''L'' and the necessity for the vessel to stop instantly. (Period (.) means a short flash of light; dash (-) means a long flash of light.)

(1) ''AA'' repeated (.-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) ''RY-CY'' (.-. -.— -.-. -.—) means ''you should proceed at slow speed, a boat is coming to you.'' This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) ''SQ3'' (... —.- ...—) means ''you should stop or heave to; I am going to board you.''

[61 FR 32540, June 24, 1996, as amended at 61 FR 37225, July 17, 1996; 63 FR 7075, Feb. 12, 1998]

§ 600.735 Penalties.

Any person committing, or fishing vessel used in the commission of a violation of the Magnuson-Stevens Act or any other statute administered by NOAA and/or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson-Stevens Act, to this section, to 15 CFR part 904 (Civil Procedures), and to other applicable law.

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

§ 600.740 Enforcement policy.

(a) The Magnuson-Stevens Act provides four basic enforcement remedies for violations, in ascending order of severity, as follows:

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR part 904, subpart E).

(2) Assessment by the Administrator of a civil money penalty.

(3) For certain violations, judicial forfeiture action against the vessel and its catch.

(4) Criminal prosecution of the owner or operator for some offenses. It shall be the policy of NMFS to enforce vigorously and equitably the provisions of the Magnuson-Stevens Act by utilizing that form or combination of authorized remedies best suited in a particular case to this end.

(b) Processing a case under one remedial form usually means that other remedies are inappropriate in that case. However, further investigation or later review may indicate the case to be either more or less serious than initially considered, or may otherwise reveal that the penalty first pursued is inadequate to serve the purposes of the Magnuson-Stevens Act. Under such circumstances, the Agency may pursue other remedies either in lieu of or in addition to the action originally taken. Forfeiture of the illegal catch does not fall within this general rule and is considered in most cases as only the initial step in remedying a violation by removing the ill-gotten gains of the offense.

(c) If a fishing vessel for which a permit has been issued under the Magnuson-Stevens Act is used in the commission of an offense prohibited by section 307 of the Magnuson-Stevens Act, NOAA may impose permit sanctions, whether or not civil or criminal action has been undertaken against the vessel or its owner or operator. In some cases, the Magnuson-Stevens Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Magnuson-Stevens Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

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

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity*. Nothing in this section is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Administrator, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Administrator, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing*—(1) *General.* A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Administrator or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.

(iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:

(A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Administrator or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the FEDERAL REGISTER with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar,

exempted fishing activity. The Regional Administrator or Director also will forward copies of the application to the Council(s), the USCG, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Administrator or Regional Administrator shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Administrator or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the FEDERAL REGISTER describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Administrator or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are

consistent with NOAA confidentiality of statistics procedures at set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration*. Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

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

(6) *Transfer*. EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection*. Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions*. Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports*. (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Administrator or Director, as specified in the EFP.

(d) *Exempted educational activities*—(1) *General*. A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Administrator or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application*. An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Administrator or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Administrator or Director may request from an applicant additional information necessary to make the determinations required

under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Administrator or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

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

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of fishing, despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

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

§ 600.746 Observers.

(a) *Applicability.* This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq.*), the ATCA (16 U.S.C. 971 *et seq.*), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), or any other U.S. law.

(b) *Observer safety.* An observer will not be deployed on, or stay aboard, a vessel that is inadequate for observer deployment as described in paragraph (c) of this section.

(c) *Vessel inadequate for observer deployment.* A vessel is inadequate for observer deployment if it:

(1) Does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679), or

(2) Has not passed a USCG Commercial Fishing Vessel Safety Examination, or for vessels less than 26 ft (8 m) in length, has not passed an alternate safety equipment examination, as described in paragraph (g) of this section.

(d) *Display or show proof*. A vessel that has passed a USCG Commercial Fishing Vessel Safety Examination must display or show proof of a valid USCG Commercial Fishing Vessel Safety Examination decal that certifies compliance with regulations found in 33 CFR Chapter 1 and 46 CFR Chapter 1, and which was issued within the last 2 years or at a time interval consistent with current USCG regulations or policy.

(1) In situations of mitigating circumstances, which may prevent a vessel from displaying a valid safety decal (broken window, etc.), NMFS, the observer, or NMFS' designated observer provider may accept the following associated documentation as proof of the missing safety decal described in paragraph (d) of this section:

(i) A certificate of compliance issued pursuant to 46 CFR 28.710;

(ii) A certificate of inspection pursuant to 46 U.S.C. 3311; or

(iii) For vessels not required to obtain the documents identified in (d)(1)(i) and (d)(1)(ii) of this section, a dockside examination report form indicating the decal number and date and place of issue.

(e) *Visual inspection*. Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner or operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation, in a manner and according to a timeframe as directed by NMFS. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(f) *Vessel safety check*. Prior to the initial deployment, the vessel owner or operator or the owner or operator's designee must accompany the observer in a walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. This action may be a part of the vessel safety orientation to be provided by the vessel to the observer as required by 46 CFR 28.270. The vessel owner or operator or the owner or operator's designee must also accompany the observer in checking the following major items as required by applicable USCG regulations:

(1) Personal flotation devices/ immersion suits;

(2) Ring buoys;

(3) Distress signals;

(4) Fire extinguishing equipment;

(5) Emergency position indicating radio beacon (EPIRB), when required, shall be registered to the vessel at its documented homeport;

(6) Survival craft, when required, with sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage; and

(7) Other fishery-area and vessel specific items required by the USCG.

(g) *Alternate safety equipment examination*. If a vessel is under 26 ft (8 m) in length, and in a remote location, and NMFS has determined that the USCG cannot provide a USCG Commercial Fishing Vessel Safety Examination due to unavailability of inspectors or to unavailability of transportation to or from an inspection station, the vessel will be adequate for observer deployment if it passes an alternate safety equipment examination conducted by a NMFS certified observer, observer provider, or a NMFS observer program employee, using a checklist of USCG safety requirements for commercial fishing vessels under 26 ft (8 m) in length. Passage of the alternative examination will only be effective for the single trip selected for observer coverage.

(h) *Duration*. The vessel owner or operator is required to comply with the requirements of this section when the vessel owner or operator is notified orally or in writing by an observer, a NMFS employee, or a designated observer provider, that his or her vessel has been selected to carry an observer. The requirements of this section continue to apply through the time of the observer's boarding, at all times the observer is aboard, and at the time the observer disembarks from the vessel at the end of the observed trip.

(i) *Effect of inadequate status*. A vessel that would otherwise be required to carry an observer, but is inadequate for the purposes of carrying an observer, as described in paragraph (c) of this section, and for allowing operation of

normal observer functions, is prohibited from fishing without observer coverage.

[63 FR 27217, May 18, 1998, as amended at 67 FR 64312, Oct. 18, 2002; 72 FR 61818, Nov. 1, 2007]

§ 600.747 Guidelines and procedures for determining new fisheries and gear.

(a) *General.* Section 305(a) of the Magnuson-Stevens Act requires the Secretary to prepare a list of all fisheries under the authority of each Council, or the Director in the case of Atlantic highly migratory species, and all gear used in such fisheries. This section contains guidelines in paragraph (b) for determining when fishing gear or a fishery is sufficiently different from those listed in § 600.725(v) as to require notification of a Council or the Director in order to use the gear or participate in the unlisted fishery. This section also contains procedures in paragraph (c) for notification of a Council or the Director of potentially new fisheries or gear, and for amending the list of fisheries and gear.

(b) *Guidelines.* The following guidance establishes the basis for determining when fishing gear or a fishery is sufficiently different from those listed to require notification of the appropriate Council or the Director.

(1) The initial step in the determination of whether a fishing gear or fishery is sufficiently different to require notification is to compare the gear or fishery in question to the list of authorized fisheries and gear in § 600.725(v) and to the existing gear definitions in § 600.10.

(2) If the gear in question falls within the bounds of a definition in § 600.10 for an allowable gear type within that fishery, as listed under § 600.725(v), then the gear is not considered different, is considered allowable gear, and does not require notification of the Council or Secretary 90 days before it can be used in that fishery.

(3) If, for any reason, the gear is not consistent with a gear definition for a listed fishery as described in paragraph (b)(2) of this section, the gear is considered different and requires Council or Secretarial notification as described in paragraph (c) of this section 90 days before it can be used in that fishery.

(4) If a fishery falls within the bounds of the list of authorized fisheries and gear in § 600.725(v) under the Council's or Secretary's authority, then the fishery is not considered different, is considered an allowable fishery and does not require notification of the Council or Director before that fishery can occur.

(5) If a fishery is not already listed in the list of authorized fisheries and gear in § 600.725(v), then the fishery is considered different and requires notification as described in paragraph (c) of this section 90 days before it can occur.

(c) *Procedures.* If a gear or fishery does not appear on the list in § 600.725(v), or if the gear is different from that defined in § 600.10, the process for notification, and consideration by a Council or the Director, is as follows:

(1) *Notification.* After July 26, 1999, no person or vessel may employ fishing gear or engage in a fishery not included on the list of approved gear types in § 600.725(v) without notifying the appropriate Council or the Director at least 90 days before the intended use of that gear.

(2) *Notification procedures.* (i) A signed return receipt for the notice serves as adequate evidence of the date that the notification was received by the appropriate Council or the Director, in the case of Atlantic highly migratory species, and establishes the beginning of the 90-day notification period, unless required information in the notification is incomplete.

(ii) The notification must include:

(A) Name, address, and telephone number of the person submitting the notification.

(B) Description of the gear.

(C) The fishery or fisheries in which the gear is or will be used.

(D) A diagram and/or photograph of the gear, as well as any specifications and dimensions necessary to define the gear.

(E) The season(s) in which the gear will be fished.

(F) The area(s) in which the gear will be fished.

(G) The anticipated bycatch species associated with the gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the ESA.

(H) How the gear will be deployed and fished, including the portions of the marine environment where the gear will be deployed (surface, midwater, and bottom).

(iii) Failure to submit complete and accurate information will result in a delay in beginning the 90-day notification period. The 90-day notification period will not begin until the information received is determined to be accurate and complete.

(3) *Action upon receipt of notification.* (i) *Species other than Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear, a Council must immediately begin consideration of the notification and send a copy of the notification to the appropriate Regional Administrator.

(B) If the Council finds that the use of an unlisted gear or participation in a new fishery would not compromise the effectiveness of conservation and management efforts, it shall:

(*1*) Recommend to the RA that the list be amended;

(*2*) Provide rationale and supporting analysis, as necessary, for proper consideration of the proposed amendment; and

(*3*) Provide a draft proposed rule for notifying the public of the proposed addition, with a request for comment.

(C) If the Council finds that the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend to the RA that the authorized list of fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation of a disapproval, and may request NMFS to publish emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate.

(D) After considering information in the notification and Council's recommendation, NMFS will decide whether to publish a proposed rule. If information on the new gear or fishery being considered indicates it is likely that it will compromise conservation and management efforts under the Magnuson-Stevens Act, and no additional new information is likely to be gained from a public comment period, then a proposed rule will not be published and NMFS will notify the appropriate Council. In such an instance, NMFS will publish emergency or interim regulations to prohibit or restrict use of the gear or participation in the fishery. If NMFS determines that the proposed amendment is not likely to compromise conservation and management efforts under the Magnuson-Stevens Act, NMFS will publish a proposed rule in the FEDERAL REGISTER with a request for public comment.

(ii) *Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear for Atlantic highly migratory species (HMS), NMFS will immediately begin consideration of the notification.

(B) Based on information in the notification and submitted by the Council, NMFS will make a determination whether the use of an unlisted gear or participation in an unlisted HMS fishery will compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act. If it is determined that the proposed amendment will not compromise conservation and management efforts, NMFS will publish a proposed rule.

(C) If NMFS finds that the proposed gear or fishery will be detrimental to conservation and management efforts in this initial stage of review, it will not publish a proposed rule and notify the applicant of the negative determination with the reasons therefor.

(4) *Final determination and publication of a final rule.* Following public comment, NMFS will approve or disapprove the amendment to the list of gear and fisheries.

(i) If approved, NMFS will publish a final rule in the FEDERAL REGISTER and notify the applicant and the Council, if appropriate, of the final approval.

(ii) If disapproved, NMFS will withdraw the proposed rule, notify the applicant and the Council, if appropriate, of the disapproval; publish emergency

or interim regulations, if necessary, to prohibit or restrict the use of gear or the participation in a fishery; and either notify the Council of the need to amend an FMP or prepare an amendment to an FMP in the case of Atlantic highly migratory species.

[64 FR 4043, Jan. 27, 1999]

Subpart I—Fishery Negotiation Panels

SOURCE: 62 FR 23669, May 1, 1997, unless otherwise noted.

§ 600.750 Definitions.

Consensus means unanimous concurrence among the members on a Fishery Negotiation Panel established under this rule, unless such Panel:

(1) Agrees to define such term to mean a general but not unanimous concurrence; or

(2) agrees upon another specified definition.

Fishery negotiation panel (FNP) means an advisory committee established by one or more Councils or the Secretary in accordance with these regulations to assist in the development of fishery conservation and management measures.

Interest means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

Report means a document submitted by an FNP in accordance with the Magnuson-Stevens Act.

[62 FR 23669, May 1, 1997, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.751 Determination of need for a fishery negotiation panel.

A Council or NMFS may establish an FNP to assist in the development of specific fishery conservation and management measures. In determining whether to establish an FNP, NMFS or the Council, as appropriate, shall consider whether:

(a) There is a need for specific fishery conservation and management measures.

(b) There are a limited number of identifiable interests that will be significantly affected by the conservation and management measure.

(c) There is a reasonable likelihood that an FNP can be convened with a balanced representation of persons who:

(1) Can adequately represent the interests identified under paragraph (b) of this section.

(2) Are willing to negotiate in good faith to reach a consensus on a report regarding the issues presented.

(d) There is a reasonable likelihood that an FNP will reach

a consensus on a report regarding the issues presented within 1 year from date of establishment of the FNP.

(e) The use of an FNP will not unreasonably delay Council or NMFS fishery management plan development or rulemaking procedures.

(f) The costs of establishment and operation of an FNP are reasonable when compared to fishery management plan development or rulemaking procedures that do not use FNP procedures.

(g) The Council or NMFS has adequate resources and is willing to commit such resources, including technical assistance, to an FNP.

(h) The use of an FNP is in the public interest.

§ 600.752 Use of conveners and facilitators.

(a) *Purposes of conveners.* A Council or NMFS may use the services of a trained convener to assist the Council or NMFS in: (1) Conducting discussions to identify the issues of concern, and to ascertain whether the establishment of an FNP regarding such matter is feasible and appropriate.

(2) Identifying persons who will be significantly affected by the issues presented in paragraph (a)(1) of this section.

(b) *Duties of conveners.* The convener shall report findings under paragraph (a)(2) of this section and shall make recommendations to the Council or NMFS. Upon request of the Council or NMFS, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the potential conservation and management measures relevant to the issues to be negotiated. The report and

any recommendations of the convener shall be made available to the public upon request.

(c) *Selection of facilitator*. Notwithstanding section 10(e) of the Federal Advisory Committee Act (FACA), a Council or NMFS may nominate a person trained in facilitation either from the Federal Government or from outside the Federal Government to serve as an impartial, neutral facilitator for the negotiations of the FNP, subject to the approval of the FNP, by consensus. The facilitator may be the same person as the convener used under paragraph (a) of this section. If the FNP does not approve the nominee of the Council or NMFS for facilitator, the FNP shall submit a substitute nomination. If an FNP does not approve any nominee of the Council or NMFS for facilitator, the FNP shall select, by consensus, a person to serve as facilitator. A person designated to represent the Council or NMFS in substantive issues may not serve as facilitator or otherwise chair the FNP.

(d) *Roles and duties of facilitator*. A facilitator shall:

(1) Chair the meetings of the FNP in an impartial manner.

(2) Impartially assist the members of the FNP in conducting discussions and negotiations.

(3) Manage the keeping of minutes and records as required under section 10(b) and (c) of FACA.

§ 600.753 Notice of intent to establish a fishery negotiation panel.

(a) *Publication of notice*. If, after considering the report of a convener or conducting its own assessment, a Council or NMFS decides to establish an FNP, NMFS shall publish in the FEDERAL REGISTER and, as appropriate, in trade or other specialized publications, a document that shall include:

(1) An announcement that the Council or NMFS intends to establish an FNP to negotiate and develop a report concerning specific conservation and management measures.

(2) A description of the subject and scope of the conservation and management measure, and the issues to be considered.

(3) A list of the interests that are likely to be significantly affected by the conservation and management measure.

(4) A list of the persons proposed to represent such interests and the person or persons proposed to represent the Council or NMFS.

(5) A proposed agenda and schedule for completing the work of the FNP.

(6) A description of administrative support for the FNP to be provided by the Council or NMFS, including technical assistance.

(7) A solicitation for comments on the proposal to establish the FNP, and the proposed membership of the FNP.

(8) An explanation of how a person may apply or nominate another person for membership on the FNP, as provided under paragraph (b) of this section.

(b) *Nomination of members and public comment*. Persons who may be significantly affected by the development of conservation and management measure and who believe that their interests will not be adequately represented by any person specified in a document under paragraph (a)(4) of this section may apply for, or nominate another person for, membership on the FNP to represent such interests. Each application or nomination shall include:

(1) The name of the applicant or nominee and a description of the interests such person shall represent.

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent.

(3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the conservation and management measure under consideration.

(4) The reasons that the persons specified in the document under paragraph (a)(4) of this section do not adequately represent the interests of the person submitting the application or nomination.

(c) *Public comment*. The Council or NMFS shall provide at least 30 calendar days for the submission of comments and applications under this section.

§ 600.754 Decision to establish a fishery negotiation panel.

(a) *Determination to establish an FNP.* If, after considering comments and applications submitted under § 600.753, the Council or NMFS determines that an FNP can adequately represent the interests that will be significantly affected and that it is feasible and appropriate in the particular case, the Council or NMFS may establish an FNP.

(b) *Determination not to establish FNP.* If, after considering such comments and applications, the Council or NMFS decides not to establish an FNP, the Council or NMFS shall promptly publish notification of such decision and the reasons therefor in the FEDERAL REGISTER and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the FNP to represent such interests with respect to the issues of concern.

§ 600.755 Establishment of a fishery negotiation panel.

(a) *General authority.* (1) A Council may establish an FNP to assist in the development of specific conservation and management measures for a fishery under its authority.

(2) NMFS may establish an FNP to assist in the development of specific conservation and management measures required for:

(i) A fishery for which the Secretary has authority under section 304(e)(5) of the Magnuson-Stevens Act, regarding rebuilding of overfished fisheries;

(ii) A fishery for which the Secretary has authority under 16 U.S.C. section 304(g), regarding highly migratory species; or

(iii) Any fishery with the approval of the appropriate Council.

(b) *Federal Advisory Committee Act (FACA)* In establishing and administering such an FNP, the Council or NMFS shall comply with the FACA with respect to such FNP.

(c) *Balance.* Each potentially affected organization or individual does not necessarily have to have its own representative, but each interest must be adequately represented. The intent is to have a group that as a whole reflects a proper balance and mix of interests. Representatives must agree, in writing, to negotiate in good faith.

(d) *Membership.* The Council or NMFS shall limit membership on an FNP to no more than 25 members, unless the Council or NMFS determines that a greater number of members is necessary for the functioning of the FNP or to achieve balanced membership. Each FNP shall include at least one person representing the Council in addition to at least one person representing NMFS.

§ 600.756 Conduct and operation of a fishery negotiation panel.

(a) *Roles and duties of an FNP.* Each FNP shall consider the issue proposed by the Council or NMFS for consideration and shall attempt to reach a consensus concerning a report to assist in the development of a conservation and management measure with respect to such matter and any other matter the FNP determines is relevant to the development of a conservation and management measure. An FNP may adopt procedures for the operation of the FNP.

(b) *Roles and duties of representative of the council or NMFS.* The person or persons representing the Council or NMFS on an FNP shall participate in the deliberations and activities of the FNP with the same rights and responsibilities as other members of the FNP, and shall be authorized to fully represent the Council or NMFS in the discussions and negotiations of the FNP.

§ 600.757 Operational protocols.

(a) *Services of conveners and facilitators.* A Council or NMFS may employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for an FNP established under § 600.755, or may use the services of a government employee to act as a convener or a facilitator for such an FNP.

(b) *Councils.* For an FNP proposed and established by one or more Councils approved expenses shall be paid out of the Council's operating budget.

(c) *Expenses of FNP members.* Members of an FNP shall be responsible for their own expenses of participation in such an FNP, except that NMFS or the

Council may, in accordance with section 7(d) of FACA, pay for a member's reasonable travel and per diem expenses, and a reasonable rate of compensation, if:

(1) Such member certifies a lack of adequate financial resources to participate in the FNP.

(2) The Council or NMFS determines that such member's participation in the FNP is necessary to assure an adequate representation of the member's interest.

(d) *Administrative support*. The Council or NMFS shall provide appropriate administrative support to an FNP including technical assistance.

§ 600.758 Preparation of report.

(a) At the conclusion of the negotiations, an FNP may submit a report. Such report shall specify:

(1) All the areas where consensus was reached by the FNP, including, if appropriate, proposed conservation and management measures.

(2) Any other information submitted by members of the FNP.

(b) Upon receipt of the report, the Council or NMFS shall publish such report in the FEDERAL REGISTER for public comment.

§ 600.759 Use of report.

A Council or NMFS may, at its discretion, use all or a part of a report prepared in accordance with § 600.758 in the development of conservation and management measures. Neither a Council nor NMFS, whichever is appropriate, is required to use such report.

§ 600.760 Fishery Negotiation Panel lifetime.

(a) An FNP shall terminate upon either:

(1) Submission of a report prepared in accordance with § 600.758; or

(2) Submission of a written statement from the FNP to the Council or NMFS that no consensus can be reached.

(b) In no event shall an FNP exist for longer than 1 year from the date of establishment unless granted an extension. Upon written request by the FNP to the Council or NMFS, and written authorization from the Council or NMFS (whichever is appropriate), the Secretary may authorize an extension for a period not to exceed 6 months. No more than one extension may be granted per FNP.

Subpart J—Essential Fish Habitat (EFH)

SOURCE: 67 FR 2376, Jan. 17, 2002, unless otherwise noted.

§ 600.805 Purpose and scope.

(a) *Purpose*. This subpart provides guidelines for Councils and the Secretary to use in adding the required EFH provisions to an FMP, i.e., description and identification of EFH, adverse effects on EFH (including minimizing, to the extent practicable, adverse effects from fishing), and actions to conserve and enhance EFH.

(b) *Scope*—(1) *Species covered*. An EFH provision in an FMP must include all fish species in the fishery management unit (FMU). An FMP may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.

(2) *Geographic*. EFH may be described and identified in waters of the United States, as defined in 33 CFR 328.3, and in the exclusive economic zone, as defined in § 600.10. Councils may describe, identify, and protect habitats of managed species beyond the exclusive economic zone; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act. Activities that may adversely affect such habitat can be addressed through any process conducted in accordance with international agreements between the United States and the foreign nation(s) undertaking or authorizing the action.

§ 600.810 Definitions and word usage.

(a) *Definitions*. In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to,

benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

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

Ecosystem means communities of organisms interacting with one another and with the chemical and physical factors making up their environment.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

Healthy ecosystem means an ecosystem where ecological productive capacity is maintained, diversity of the flora and fauna is preserved, and the ecosystem retains the ability to regulate itself. Such an ecosystem should be similar to comparable, undisturbed ecosystems with regard to standing crop, productivity, nutrient dynamics, trophic structure, species richness, stability, resilience, contamination levels, and the frequency of diseased organisms.

Overfished means any stock or stock complex, the status of which is reported as overfished by the Secretary pursuant to section 304(e)(1) of the Magnuson-Stevens Act.

(b) *Word usage*. The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c).

§ 600.815 Contents of Fishery Management Plans.

(a) *Mandatory contents*—(1) *Description and identification of EFH*—(i) *Overview*. FMPs must describe and identify EFH in text that clearly states the habitats or habitat types determined to be EFH for each life stage of the managed species. FMPs should explain the physical, biological, and chemical characteristics of EFH and, if known, how these characteristics influence the use of EFH by the species/life stage. FMPs must identify the specific geographic location or extent of habitats described as EFH. FMPs must include maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found.

(ii) *Habitat information by life stage*. (A) Councils need basic information to understand the usage of various habitats by each managed species. Pertinent information includes the geographic range and habitat requirements by life stage, the distribution and characteristics of those habitats, and current and historic stock size as it affects occurrence in available habitats. FMPs should summarize the life history information necessary to understand each species' relationship to, or dependence on, its various habitats, using text, tables, and figures, as appropriate. FMPs should document patterns of temporal and spatial variation in the distribution of each major life stage (defined by developmental and functional shifts) to aid in understanding habitat needs. FMPs should summarize (e.g., in tables) all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. The information should be supported with citations.

(B) Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information. Councils should consider different types of information according to its scientific rigor. FMPs should identify species-specific habitat data gaps and deficits in data quality (including considerations of scale and resolution; relevance; and potential biases in collection and interpretation). FMPs must demonstrate that the best scientific information available was used in the description and identification of EFH, consistent with national standard 2.

(iii) *Analysis of habitat information*. (A) The following approach should be used to organize the information necessary to describe and identify EFH.

(*1*) *Level 1: Distribution data are available for some or all portions of the geographic range of the species.* At this level, only distribution data are available to describe the geographic range of a species (or life stage). Distribution data may be derived from systematic presence/absence sampling and/or may include information on species and life stages collected opportunistically. In the event that distribution data are available only for portions of the geographic area occupied by a particular life stage of a species, habitat use can be inferred on the basis of distributions among habitats where the species has been found and on information about its habitat requirements and behavior. Habitat use may also be inferred, if appropriate, based on information on a similar species or another life stage.

(*2*) *Level 2: Habitat-related densities of the species are available.* At this level, quantitative data (i.e., density or relative abundance) are available for the habitats occupied by a species or life stage. Because the efficiency of sampling methods is often affected by habitat characteristics, strict quality assurance criteria should be used to ensure that density estimates are comparable among methods and habitats. Density data should reflect habitat utilization, and the degree that a habitat is utilized is assumed to be indicative of habitat value. When assessing habitat value on the basis of fish densities in this manner, temporal changes in habitat availability and utilization should be considered.

(*3*) *Level 3: Growth, reproduction, or survival rates within habitats are available.* At this level, data are available on habitat-related growth, reproduction, and/or survival by life stage. The habitats contributing the most to productivity should be those that support the highest growth, reproduction, and survival of the species (or life stage).

(*4*) *Level 4: Production rates by habitat are available.* At this level, data are available that directly relate the production rates of a species or life stage to habitat type, quantity, quality, and location. Essential habitats are those necessary to maintain fish production consistent with a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(B) Councils should strive to describe habitat based on the highest level of detail (i.e., Level 4). If there is no information on a given species or life stage, and habitat usage cannot be inferred from other means, such as information on a similar species or another life stage, EFH should not be designated.

(iv) *EFH determination.* (A) Councils should analyze available ecological, environmental, and fisheries information and data relevant to the managed species, the habitat requirements by life stage, and the species' distribution and habitat usage to describe and identify EFH. The information described in paragraphs (a)(1)(ii) and (iii) of this section will allow Councils to assess the relative value of habitats. Councils should interpret this information in a risk-averse fashion to ensure adequate areas are identified as EFH for managed species. Level 1 information, if available, should be used to identify the geographic range of the species at each life stage. If only Level 1 information is available, distribution data should be evaluated (e.g., using a frequency of occurrence or other appropriate analysis) to identify EFH as those habitat areas most commonly used by the species. Level 2 through 4 information, if available, should be used to identify EFH as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species. FMPs should explain the analyses conducted to distinguish EFH from all habitats potentially used by a species.

(B) FMPs must describe EFH in text, including reference to the geographic location or extent of EFH using boundaries such as longitude and latitude, isotherms, isobaths, political boundaries, and major landmarks. If there are differences between the descriptions of EFH in text, maps, and tables, the textual description is ultimately determinative of the limits of EFH. Text and tables should explain pertinent physical, chemical, and biological characteristics of EFH for the managed species and explain any variability in habitat usage patterns, but the boundaries of EFH should be static.

(C) If a species is overfished and habitat loss or degradation may be contributing to the species being identified as overfished, all habitats currently used by the species may be considered essential in addition to certain historic habitats that are necessary to support rebuilding the fishery and for which restoration is technologically and economically feasible. Once the fishery is no longer considered overfished, the EFH identification should be reviewed and amended, if appropriate.

(D) Areas described as EFH will normally be greater than or equal to aquatic areas that have been identified as ''critical habitat'' for any managed species listed as threatened or endangered under the Endangered Species Act.

(E) Ecological relationships among species and between the species and their habitat require, where possible, that an ecosystem approach be used in determining the EFH of a managed species. EFH must be designated for each managed species, but, where appropriate, may be designated for assemblages of species or life stages that have similar habitat needs and requirements. If grouping species or using species assemblages for the purpose of designating EFH, FMPs must include a justification and scientific rationale. The extent of the EFH should be based on the judgment of the Secretary and the appropriate Council(s) regarding the quantity and quality of habitat that are necessary to maintain a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(F) If degraded or inaccessible aquatic habitat has contributed to reduced yields of a species or assemblage and if, in the judgment of the Secretary and the appropriate Council(s), the degraded conditions can be reversed through such actions as improved fish passage techniques (for stream or river blockages), improved water quality measures (removal of contaminants or increasing flows), and similar measures that are technologically and economically feasible, EFH should include those habitats that would be necessary to the species to obtain increased yields.

(v) *EFH mapping requirements.* (A) FMPs must include maps that display, within the constraints of available information, the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Maps should identify the different types of habitat designated as EFH to the extent possible. Maps should explicitly distinguish EFH from non-EFH areas. Councils should confer with NMFS regarding mapping standards to ensure that maps from different Councils can be combined and shared efficiently and effectively. Ultimately, data used for mapping should be incorporated into a geographic information system (GIS) to facilitate analysis and presentation.

(B) Where the present distribution or stock size of a species or life stage is different from the historical distribution or stock size, then maps of historical habitat boundaries should be included in the FMP, if known.

(C) FMPs should include maps of any habitat areas of particular concern identified under paragraph (a)(8) of this section.

(2) *Fishing activities that may adversely affect EFH*—(i) *Evaluation.* Each FMP must contain an evaluation of the potential adverse effects of fishing on EFH designated under the FMP, including effects of each fishing activity regulated under the FMP or other Federal FMPs. This evaluation should consider the effects of each fishing activity on each type of habitat found within EFH. FMPs must describe each fishing activity, review and discuss all available relevant information (such as information regarding the intensity, extent, and frequency of any adverse effect on EFH; the type of habitat within EFH that may be affected adversely; and the habitat functions that may be disturbed), and provide conclusions regarding whether and how each fishing activity adversely affects EFH. The evaluation should also consider the cumulative effects of multiple fishing activities on EFH. The evaluation should list any past management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The evaluation should give special attention to

adverse effects on habitat areas of particular concern and should identify for possible designation as habitat areas of particular concern any EFH that is particularly vulnerable to fishing activities. Additionally, the evaluation should consider the establishment of research closure areas or other measures to evaluate the impacts of fishing activities on EFH. In completing this evaluation, Councils should use the best scientific information available, as well as other appropriate information sources. Councils should consider different types of information according to its scientific rigor.

(ii) *Minimizing adverse effects.* Each FMP must minimize to the extent practicable adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature, based on the evaluation conducted pursuant to paragraph (a)(2)(i) of this section and/or the cumulative impacts analysis conducted pursuant to paragraph (a)(5) of this section. In such cases, FMPs should identify a range of potential new actions that could be taken to address adverse effects on EFH, include an analysis of the practicability of potential new actions, and adopt any new measures that are necessary and practicable. Amendments to the FMP or to its implementing regulations must ensure that the FMP continues to minimize to the extent practicable adverse effects on EFH caused by fishing. FMPs must explain the reasons for the Council's conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.

(iii) *Practicability.* In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.

(iv) Options for managing adverse effects from fishing. Fishery management options may include, but are not limited to:

(A) *Fishing equipment restrictions.* These options may include, but are not limited to: seasonal and areal restrictions on the use of specified equipment, equipment modifications to allow escapement of particular species or particular life stages (e.g., juveniles), prohibitions on the use of explosives and chemicals, prohibitions on anchoring or setting equipment in sensitive areas, and prohibitions on fishing activities that cause significant damage to EFH.

(B) *Time/area closures.* These actions may include, but are not limited to: closing areas to all fishing or specific equipment types during spawning, migration, foraging, and nursery activities and designating zones for use as marine protected areas to limit adverse effects of fishing practices on certain vulnerable or rare areas/species/life stages, such as those areas designated as habitat areas of particular concern.

(C) *Harvest limits.* These actions may include, but are not limited to, limits on the take of species that provide structural habitat for other species assemblages or communities and limits on the take of prey species.

(3) *Non-Magnuson-Stevens Act fishing activities that may adversely affect EFH.* FMPs must identify any fishing activities that are not managed under the Magnuson-Stevens Act that may adversely affect EFH. Such activities may include fishing managed by state agencies or other authorities.

(4) *Non-fishing related activities that may adversely affect EFH.* FMPs must identify activities other than fishing that may adversely affect EFH. Broad categories of such activities include, but are not limited to: dredging, filling, excavation, mining, impoundment, discharge, water diversions, thermal additions, actions that contribute to non-point source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of

aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. For each activity, the FMP should describe known and potential adverse effects to EFH.

(5) *Cumulative impacts analysis.* Cumulative impacts are impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of who undertakes such actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time. To the extent feasible and practicable, FMPs should analyze how the cumulative impacts of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale. An assessment of the cumulative and synergistic effects of multiple threats, including the effects of natural stresses (such as storm damage or climate-based environmental shifts) and an assessment of the ecological risks resulting from the impact of those threats on EFH, also should be included.

(6) *Conservation and enhancement.* FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for the adverse effects identified pursuant to paragraphs (a)(3) through (5) of this section, especially in habitat areas of particular concern.

(7) *Prey species.* Loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH. FMPs should list the major prey species for the species in the fishery management unit and discuss the location of prey species' habitat. Adverse effects on prey species and their habitats may result from fishing and non-fishing activities.

(8) *Identification of habitat areas of particular concern.* FMPs should identify specific types or areas of habitat within EFH as habitat areas of particular concern based on one or more of the following considerations:

(i) The importance of the ecological function provided by the habitat.

(ii) The extent to which the habitat is sensitive to human-induced environmental degradation.

(iii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(iv) The rarity of the habitat type.

(9) *Research and information needs.* Each FMP should contain recommendations, preferably in priority order, for research efforts that the Councils and NMFS view as necessary to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and other activities, and the development of conservation and enhancement measures for EFH.

(10) *Review and revision of EFH components of FMPs.* Councils and NMFS should periodically review the EFH provisions of FMPs and revise or amend EFH provisions as warranted based on available information. FMPs should outline the procedures the Council will follow to review and update EFH information. The review of information should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to § 600.315(e). A complete review of all EFH information should be conducted as recommended by the Secretary, but at least once every 5 years.

(b) *Development of EFH recommendations for Councils.* After reviewing the best available scientific information, as well as other appropriate information, and in consultation with the Councils, participants in the fishery,

interstate commissions, Federal agencies, state agencies, and other interested parties, NMFS will develop written recommendations to assist each Council in the identification of EFH, adverse impacts to EFH, and actions that should be considered to ensure the conservation and enhancement of EFH for each FMP. NMFS will provide such recommendations for the initial incorporation of EFH information into an FMP and for any subsequent modification of the EFH components of an FMP. The NMFS EFH recommendations may be provided either before the Council's development of a draft EFH document or later as a review of a draft EFH document developed by a Council, as appropriate.

(c) *Relationship to other fishery management authorities.* Councils are encouraged to coordinate with state and interstate fishery management agencies where Federal fisheries affect state and interstate managed fisheries or where state or interstate fishery regulations affect the management of Federal fisheries. Where a state or interstate fishing activity adversely affects EFH, NMFS will consider that action to be an adverse effect on EFH pursuant to paragraph (a)(3) of this section and will provide EFH Conservation Recommendations to the appropriate state or interstate fishery management agency on that activity.

Subpart K—EFH Coordination, Consultation, and Recommendations

SOURCE: 67 FR 2376, Jan. 17, 2002, unless otherwise noted.

§ 600.905 Purpose, scope, and NMFS/Council cooperation.

(a) *Purpose.* These procedures address the coordination, consultation, and recommendation requirements of sections 305(b)(1)(D) and 305(b)(2–4) of the Magnuson-Stevens Act. The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.

(b) *Scope.* Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with, and provide information to, other Federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all Federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Sections 305(b)(3) and (4) direct the Secretary and the Councils to provide comments and EFH Conservation Recommendations to Federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. Section 305(b)(4)(B) requires Federal agencies to respond in writing to such comments. The following procedures for coordination, consultation, and recommendations allow all parties involved to understand and implement the requirements of the Magnuson-Stevens Act.

(c) *Cooperation between Councils and NMFS.* The Councils and NMFS should cooperate closely to identify actions that may adversely affect EFH, to develop comments and EFH Conservation Recommendations to Federal and state agencies, and to provide EFH information to Federal and state agencies. NMFS will work with each Council to share information and to coordinate Council and NMFS comments and recommendations on actions that may adversely affect EFH. However, NMFS and the Councils also have the authority to act independently.

§ 600.910 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within

EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Anadromous fishery resource under Council authority means an anadromous species managed under an FMP.

Federal action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

State action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a state agency.

(b) *Word usage*. The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c).

§ 600.915 Coordination for the conservation and enhancement of EFH.

To further the conservation and enhancement of EFH in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies, and the general public, information on the locations of EFH, including maps and/or narrative descriptions. NMFS will also provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. Federal and state agencies empowered to authorize, fund, or undertake actions that may adversely affect EFH are encouraged to contact NMFS and the Councils to become familiar with areas designated as EFH, potential threats to EFH, and opportunities to promote the conservation and enhancement of EFH.

§ 600.920 Federal agency consultation with the Secretary.

(a) *Consultation generally*—(1) *Actions requiring consultation*. Pursuant to section 305(b)(2) of the Magnuson-Stevens Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. EFH consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary, e.g., issued permits. Consultation is required for renewals, reviews, or substantial revisions of actions if the renewal, review, or revision may adversely affect EFH. Consultation on Federal programs delegated to non-Federal entities is required at the time of delegation, review, and renewal of the delegation. EFH consultation is required for any Federal funding of actions that may adversely affect EFH. NMFS and Federal agencies responsible for funding actions that may adversely affect EFH should consult on a programmatic level under paragraph (j) of this section, if appropriate, with respect to these actions. Consultation is required for emergency Federal actions that may adversely affect EFH, such as hazardous material clean-up, response to natural disasters, or actions to protect public safety. Federal agencies should contact NMFS early in emergency response planning, but may consult after-the-fact if consultation on an expedited basis is not practicable before taking the action.

(2) *Approaches for conducting consultation*. Federal agencies may use one of the five approaches described in paragraphs (f) through (j) of this section to fulfill the EFH consultation requirements. The selection of a particular approach for handling EFH consultation depends on the nature and scope of the actions that may adversely affect EFH. Federal agencies should use the most efficient approach for EFH consultation that is appropriate for a given action or actions. The five approaches are: use of existing environmental review procedures, General Concurrence, abbreviated consultation, expanded consultation, and programmatic consultation.

(3) *Early notification and coordination*. The Federal agency should notify NMFS in writing as early as practicable regarding actions that may adversely affect EFH. Notification will facilitate discussion of measures to conserve EFH. Such early coordination should occur during pre-application planning for projects subject to a Federal permit or license and during preliminary planning for projects to be

funded or undertaken directly by a Federal agency.

(b) *Designation of lead agency*. If more than one Federal agency is responsible for a Federal action, the consultation requirements of sections 305(b)(2) through (4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency should notify NMFS in writing that it is representing one or more additional agencies. Alternatively, if one Federal agency has completed an EFH consultation for an action and another Federal agency acts separately to authorize, fund, or undertake the same activity (such as issuing a permit for an activity that was funded via a separate Federal action), the completed EFH consultation may suffice for both Federal actions if it adequately addresses the adverse effects of the actions on EFH. Federal agencies may need to consult with NMFS separately if, for example, only one of the agencies has the authority to implement measures necessary to minimize adverse effects on EFH and that agency does not act as the lead agency.

(c) *Designation of non-Federal representative*. A Federal agency may designate a non-Federal representative to conduct an EFH consultation by giving written notice of such designation to NMFS. If a non-Federal representative is used, the Federal action agency remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4)(B) of the Magnuson-Stevens Act.

(d) *Best available information*. The Federal agency and NMFS must use the best scientific information available regarding the effects of the action on EFH and the measures that can be taken to avoid, minimize, or offset such effects. Other appropriate sources of information may also be considered.

(e) *EFH Assessments*—(1) *Preparation requirement*. For any Federal action that may adversely affect EFH, Federal agencies must provide NMFS with a written assessment of the effects of that action on EFH. For actions covered by a General Concurrence under paragraph (g) of this section, an EFH Assessment should be completed during the development of the General Concurrence and is not required for the individual actions. For actions addressed by a programmatic consultation under paragraph (j) of this section, an EFH Assessment should be completed during the programmatic consultation and is not required for individual actions implemented under the program, except in those instances identified by NMFS in the programmatic consultation as requiring separate EFH consultation. Federal agencies are not required to provide NMFS with assessments regarding actions that they have determined would not adversely affect EFH. Federal agencies may incorporate an EFH Assessment into documents prepared for other purposes such as Endangered Species Act (ESA) Biological Assessments pursuant to 50 CFR part 402 or National Environmental Policy Act (NEPA) documents and public notices pursuant to 40 CFR part 1500. If an EFH Assessment is contained in another document, it must include all of the information required in paragraph (e)(3) of this section and be clearly identified as an EFH Assessment. The procedure for combining an EFH consultation with other environmental reviews is set forth in paragraph (f) of this section.

(2) *Level of detail*. The level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the action. For example, for relatively simple actions involving minor adverse effects on EFH, the assessment may be very brief. Actions that may pose a more serious threat to EFH warrant a correspondingly more detailed EFH Assessment.

(3) *Mandatory contents*. The assessment must contain:

(i) A description of the action.

(ii) An analysis of the potential adverse effects of the action on EFH and the managed species.

(iii) The Federal agency's conclusions regarding the effects of the action on EFH.

(iv) Proposed mitigation, if applicable.

(4) *Additional information*. If appropriate, the assessment should also include:

(i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.

(ii) The views of recognized experts on the habitat or species that may be affected.

(iii) A review of pertinent literature and related information.

(iv) An analysis of alternatives to the action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH.

(v) Other relevant information.

(5) *Incorporation by reference.* The assessment may incorporate by reference a completed EFH Assessment prepared for a similar action, supplemented with any relevant new project specific information, provided the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting. It may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS with the EFH Assessment.

(f) *Use of existing environmental review procedures*—(1) *Purpose and criteria.* Consultation and commenting under sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as NEPA, the Fish and Wildlife Coordination Act, Clean Water Act, ESA, and Federal Power Act. The requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act, including consultations that would be considered to be abbreviated or expanded consultations under paragraphs (h) and (i) of this section, can be combined with existing procedures required by other statutes if such processes meet, or are modified to meet, the following criteria:

(i) The existing process must provide NMFS with timely notification of actions that may adversely affect EFH. The Federal agency should notify NMFS according to the same timeframes for notification (or for public comment) as in the existing process. Whenever possible, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter timeframes provided that they allow sufficient time for NMFS to develop EFH Conservation Recommendations.

(ii) Notification must include an assessment of the impacts of the action on EFH that meets the requirements for EFH Assessments contained in paragraph (e) of this section. If the EFH Assessment is contained in another document, the Federal agency must identify that section of the document as the EFH Assessment.

(iii) NMFS must have made a finding pursuant to paragraph (f)(3) of this section that the existing process can be used to satisfy the requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act.

(2) *NMFS response to Federal agency.* If an existing environmental review process is used to fulfill the EFH consultation requirements, the comment deadline for that process should apply to the submittal of NMFS EFH Conservation Recommendations under section 305(b)(4)(A) of the Magnuson-Stevens Act, unless NMFS and the Federal agency agree to a different deadline. If NMFS EFH Conservation Recommendations are combined with other NMFS or NOAA comments on a Federal action, such as NOAA comments on a draft Environmental Impact Statement, the EFH Conservation Recommendations will be clearly identified as such (e.g., a section in the comment letter entitled ''EFH Conservation Recommendations'') and a Federal agency response pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act is required for only the identified portion of the comments.

(3) *NMFS finding.* A Federal agency with an existing environmental review process should contact NMFS at the appropriate level (regional offices for regional processes, headquarters office for national processes) to discuss how to combine the EFH consultation requirements with the existing process, with or without modifications. If, at the conclusion of these discussions, NMFS determines that the existing or modified process meets the criteria of paragraph (f)(1) of this section, NMFS will make a finding that the process can be used to satisfy the EFH consultation requirements of the Magnuson-Stevens Act. If NMFS does not

make such a finding, or if there are no existing consultation processes relevant to the Federal agency's actions, the agency and NMFS should follow one of the approaches for consultation discussed in the following sections.

(g) *General Concurrence*—(1) *Purpose*. A General Concurrence identifies specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in no more than minimal adverse effects individually and cumulatively. General Concurrences may be national or regional in scope.

(2) *Criteria*. (i) For Federal actions to qualify for General Concurrence, NMFS must determine that the actions meet all of the following criteria:

(A) The actions must be similar in nature and similar in their impact on EFH.

(B) The actions must not cause greater than minimal adverse effects on EFH when implemented individually.

(C) The actions must not cause greater than minimal cumulative adverse effects on EFH.

(ii) Actions qualifying for General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. In most cases, tracking actions covered by a General Concurrence will be the responsibility of the Federal agency. However, NMFS may agree to track such actions. Tracking should include numbers of actions and the amount and type of habitat adversely affected, and should specify the baseline against which the actions will be tracked. The agency responsible for tracking such actions should make the information available to NMFS, the applicable Council(s), and to the public on an annual basis.

(iii) Categories of Federal actions may also qualify for General Concurrence if they are modified by appropriate conditions that ensure the actions will meet the criteria in paragraph (g)(2)(i) of this section. For example, NMFS may provide General Concurrence for additional actions contingent upon project size limitations, seasonal restrictions, or other conditions.

(iv) If a General Concurrence is proposed for actions that may adversely affect habitat areas of particular concern, the General Concurrence should be subject to a higher level of scrutiny than a General Concurrence not involving a habitat area of particular concern.

(3) *General Concurrence development*. A Federal agency may request a General Concurrence for a category of its actions by providing NMFS with an EFH Assessment containing a description of the nature and approximate number of the actions, an analysis of the effects of the actions on EFH, including cumulative effects, and the Federal agency's conclusions regarding the magnitude of such effects. If NMFS agrees that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will provide the Federal agency with a written statement of General Concurrence that further consultation is not required. If NMFS does not agree that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will notify the Federal agency that a General Concurrence will not be issued and that another type of consultation will be required. If NMFS identifies specific types of Federal actions that may meet the requirements for a General Concurrence, NMFS may initiate and complete a General Concurrence.

(4) *Further consultation*. NMFS may request notification for actions covered under a General Concurrence if NMFS concludes there are circumstances under which such actions could result in more than a minimal impact on EFH, or if it determines that there is no process in place to adequately assess the cumulative impacts of actions covered under the General Concurrence. NMFS may request further consultation for these actions on a case-by-case basis. Each General Concurrence should establish specific procedures for further consultation, if appropriate.

(5) *Notification*. After completing a General Concurrence, NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public by posting the document on the internet or through other appropriate means.

(6) *Revisions.* NMFS will periodically review and revise its General Concurrences, as appropriate.

(h) *Abbreviated consultation procedures*—(1) *Purpose and criteria.* Abbreviated consultation allows NMFS to determine quickly whether, and to what degree, a Federal action may adversely affect EFH. Federal actions that may adversely affect EFH should be addressed through the abbreviated consultation procedures when those actions do not qualify for a General Concurrence, but do not have the potential to cause substantial adverse effects on EFH. For example, the abbreviated consultation procedures should be used when the adverse effect(s) of an action could be alleviated through minor modifications.

(2) *Notification by agency and submittal of EFH Assessment.* Abbreviated consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for consultation.

(3) *NMFS response to Federal agency.* If NMFS determines, contrary to the Federal agency's assessment, that an action would not adversely affect EFH, or if NMFS determines that no EFH Conservation Recommendations are needed, NMFS will notify the Federal agency either informally or in writing of its determination. If NMFS believes that the action may result in substantial adverse effects on EFH, or that additional analysis is needed to assess the effects of the action, NMFS will request in writing that the Federal agency initiate expanded consultation. Such request will explain why NMFS believes expanded consultation is needed and will specify any new information needed. If expanded consultation is not necessary, NMFS will provide EFH Conservation Recommendations, if appropriate, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 60 days prior to a final decision on the action. NMFS must respond in writing within 30 days. NMFS and the Federal agency may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 30 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(i) *Expanded consultation procedures*—(1) *Purpose and criteria.* Expanded consultation allows maximum opportunity for NMFS and the Federal agency to work together to review the action's impacts on EFH and to develop EFH Conservation Recommendations. Expanded consultation procedures must be used for Federal actions that would result in substantial adverse effects to EFH. Federal agencies are encouraged to contact NMFS at the earliest opportunity to discuss whether the adverse effects of an action make expanded consultation appropriate.

(2) *Notification by agency and submittal of EFH Assessment.* Expanded consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for expanded consultation. Federal agencies are encouraged to provide in the EFH Assessment the additional information identified under paragraph (e)(4) of this section to facilitate review of the effects of the action on EFH.

(3) *NMFS response to Federal agency.* NMFS will:

(i) Review the EFH Assessment, any additional information furnished by the Federal agency, and other relevant information.

(ii) Conduct a site visit, if appropriate, to assess the quality of the habitat and to clarify the impacts of the Federal agency action. Such a site visit should be coordinated with the Federal agency and appropriate Council(s), if feasible.

(iii) Coordinate its review of the action with the appropriate Council(s).

(iv) Discuss EFH Conservation Recommendations with the Federal agency and provide such recommendations to the Federal agency, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 90 days prior to a final decision on the action. NMFS must respond within 60

days of submittal of a complete EFH Assessment unless consultation is extended by agreement between NMFS and the Federal agency. NMFS and Federal agencies may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 60 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(5) *Extension of consultation*. If NMFS determines that additional data or analysis would provide better information for development of EFH Conservation Recommendations, NMFS may request additional time for expanded consultation. If NMFS and the Federal agency agree to an extension, the Federal agency should provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal agency do not agree to extend consultation, NMFS must provide EFH Conservation Recommendations to the Federal agency using the best scientific information available to NMFS.

(j) *Programmatic consultation*—(1) *Purpose*. Programmatic consultation provides a means for NMFS and a Federal agency to consult regarding a potentially large number of individual actions that may adversely affect EFH. Programmatic consultation will generally be the most appropriate option to address funding programs, large-scale planning efforts, and other instances where sufficient information is available to address all reasonably foreseeable adverse effects on EFH of an entire program, parts of a program, or a number of similar individual actions occurring within a given geographic area.

(2) *Process*. A Federal agency may request programmatic consultation by providing NMFS with an EFH Assessment in accordance with paragraph (e) of this section. The description of the proposed action in the EFH Assessment should describe the program and the nature and approximate number (annually or by some other appropriate time frame) of the actions. NMFS may also initiate programmatic consultation by requesting pertinent information from a Federal agency.

(3) *NMFS response to Federal agency*. NMFS will respond to the Federal agency with programmatic EFH Conservation Recommendations and, if applicable, will identify any potential adverse effects that could not be addressed programmatically and require project-specific consultation. NMFS may also determine that programmatic consultation is not appropriate, in which case all EFH Conservation Recommendations will be deferred to project-specific consultations. If appropriate, NMFS' response may include a General Concurrence for activities that qualify under paragraph (g) of this section.

(k) *Responsibilities of Federal agency following receipt of EFH Conservation Recommendations*—(1) *Federal agency response*. As required by section 305(b)(4)(B) of the Magnuson-Stevens Act, the Federal agency must provide a detailed response in writing to NMFS and to any Council commenting on the action under section 305(b)(3) of the Magnuson-Stevens Act within 30 days after receiving an EFH Conservation Recommendation from NMFS. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations, unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(2) *Further review of decisions inconsistent with NMFS or Council recommendations*. If a Federal agency decision is inconsistent with a NMFS EFH Conservation Recommendation, the Assistant Administrator for Fisheries may request a meeting with the head of the Federal agency, as well as with

any other agencies involved, to discuss the action and opportunities for resolving any disagreements. If a Federal agency decision is also inconsistent with a Council recommendation made pursuant to section 305(b)(3) of the Magnuson-Stevens Act, the Council may request that the Assistant Administrator initiate further review of the Federal agency's decision and involve the Council in any interagency discussion to resolve disagreements with the Federal agency. The Assistant Administrator will make every effort to accommodate such a request. NMFS may develop written procedures to further define such review processes.

(l) *Supplemental consultation*. A Federal agency must reinitiate consultation with NMFS if the agency substantially revises its plans for an action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS EFH Conservation Recommendations.

§ 600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.

(a) *General*. Under section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS is required to provide EFH Conservation Recommendations to Federal and state agencies for actions that would adversely affect EFH. NMFS will not recommend that state or Federal agencies take actions beyond their statutory authority.

(b) *Recommendations to Federal agencies*. For Federal actions, EFH Conservation Recommendations will be provided to Federal agencies as part of EFH consultations conducted pursuant to § 600.920. If NMFS becomes aware of a Federal action that would adversely affect EFH, but for which a Federal agency has not initiated an EFH consultation, NMFS may request that the Federal agency initiate EFH consultation, or NMFS will provide EFH Conservation Recommendations based on the information available.

(c) *Recommendations to state agencies*—(1) *Establishment of procedures*. The Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH. NMFS will use existing coordination procedures or establish new procedures to identify state actions that may adversely affect EFH, and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

(2) *Coordination with states on recommendations to Federal agencies*. When an action that would adversely affect EFH is authorized, funded, or undertaken by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH Conservation Recommendations developed as part of the Federal consultation procedures in § 600.920. NMFS will also seek agreements on sharing information and copies of recommendations with Federal or state agencies conducting similar consultation and recommendation processes to ensure coordination of such efforts.

(d) *Coordination with Councils*. NMFS will coordinate with each Council to identify the types of actions on which Councils intend to comment pursuant to section 305(b)(3) of the Magnuson-Stevens Act. For such actions NMFS will share pertinent information with the Council, including copies of NMFS' EFH Conservation Recommendations.

§ 600.930 Council comments and recommendations to Federal and state agencies.

Under section 305(b)(3) of the Magnuson-Stevens Act, Councils may comment on and make recommendations to the Secretary and any Federal or state agency concerning any activity or proposed activity authorized, funded, or undertaken by the agency that, in the view of the Council, may affect the habitat, including EFH, of a fishery resource under its authority. Councils must provide such comments and recommendations concerning any activity that, in the view of the Council, is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under Council authority.

(a) *Establishment of procedures*. Each Council should establish procedures for reviewing Federal or state actions that may adversely affect the habitat, including EFH, of a species under its authority. Each Council may receive information on actions of concern by methods such as directing Council staff

to track proposed actions, recommending that the Council's habitat committee identify actions of concern, or entering into an agreement with NMFS to have the appropriate Regional Administrator notify the Council of actions of concern that would adversely affect EFH. Federal and state actions often follow specific timetables which may not coincide with Council meetings. Therefore, Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(b) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal actions of concern as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency. Each Council should provide NMFS with copies of its comments and recommendations to state and Federal agencies.

Subpart L—Fishing Capacity Reduction Framework

AUTHORITY: 16 U.S.C. 1861a(b)–(e).

SOURCE: 65 FR 31443, May 18, 2000, unless otherwise noted.

§ 600.1000 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings:

Address of Record means the business address of a person, partnership, or corporation. Addresses listed on permits or other NMFS records are presumed to be business addresses, unless clearly indicated otherwise.

Bid means the price a vessel owner or reduction fishery permit holder requests for reduction of his/her fishing capacity. It is an irrevocable offer in response to the invitation to bid in § 600.1009.

Borrower means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery.

Business plan means the document containing the information specified in § 600.1003(n) and required to be submitted with a request for a financed program.

Business week means a 7-day period, Saturday through Friday.

Controlling fishery management plan or program (CFMP) means either any fishery management plan or any state fishery management plan or program, including amendments to the plan or program, pursuant to which a fishery is managed.

Delivery value means:

(1) For unprocessed fish, all compensation that a fish buyer pays to a fish seller in exchange for fee fish; and

(2) For processed fish, all compensation that a fish buyer would have paid to a fish seller in exchange for fee fish if the fee fish had been unprocessed fish instead of processed fish.

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services exchanged in lieu of cash. It is synonymous with the statutory term ''ex-vessel value'' as used in section 312 of the Magnuson Act.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated account maintained at a federally insured financial institution for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying a reduction loan.

Fair market value means the amount that a buyer pays a seller in an arm's length transaction or, alternatively, would pay a seller if the transaction were at arm's length.

Fee means the amount that fish buyers deduct from the delivery value under a financed reduction program. The fee is the delivery value times the reduction fishery's applicable fee rate under section 600.1013.

Fee fish means all fish harvested from a reduction fishery involving a financed program during the period in which any amount of the reduction loan remains unpaid. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery.

Final development plan means the document NMFS prepares, under

§ 600.1006(b) and based on the preliminary development plan the requester submits, for a subsidized program.

Financed means funded, in any part, by a reduction loan.

Fish buyer means the first ex-vessel party who:

(1) in an arm's—length transaction, purchases fee fish from a fish seller;

(2) takes fish on consignment from a fish seller; or

(3) otherwise receives fish from a fish seller in a non arm's-length transaction.

Fish delivery means the point at which a fish buyer first purchases fee fish or takes possession of fee fish from a fish seller.

Fishing capacity reduction specifications means the minimum amount of fishing capacity reduction and the maximum amount of reduction loan principal specified in a business plan.

Fish seller means the party who harvests and first sells or otherwise delivers fee fish to a fish buyer.

Fishery Management Plan (FMP) means any Federal fishery management plan, including amendments to the plan, that the Secretary of Commerce approves or adopts pursuant to section 303 of the Magnuson-Stevens Act.

Fund means the Fishing Capacity Reduction Fund, and each subaccount for each program, established in the U.S. Treasury for the deposit into, and disbursement from, all funds, including all reduction loan capital and all fee revenue, involving each program.

Implementation plan means the plan in § 600.1008 for carrying out each program.

Implementation regulations mean the regulations in § 600.1008 for carrying out each program.

Net delivery value means the delivery value minus the fee.

Post-bidding referendum means a referendum that follows bidding under § 600.1009.

Post-reduction means after a program reduces fishing capacity in a reduction fishery.

Pre-bidding referendum means a referendum that occurs at any time after a request for a financed program but before a proposal under § 600.1008 of an implementation plan and implementation regulations.

Preliminary development plan means the document specified in § 600.1005(g) and required to be submitted with a request for a subsidized program.

Processed fish means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

Program means each instance of reduction under this subpart, in each reduction fishery—starting with a request and ending, for a financed program, with full reduction loan repayment.

Reduction means the act of reducing fishing capacity under any program.

Reduction amendment means any amendment, or, where appropriate, framework adjustment, to a CFMP that may be necessary for a program to meet the requirements of this subpart.

Reduction amendment specifications mean the reduction amendment to a CFMP specified in a business plan.

Reduction contract means the invitation to bid under § 600.1009, together with each bidder's irrevocable offer and NMFS' conditional or non-conditional acceptance of each such bid under § 600.1009.

Reduction cost means the total dollar amount of all reduction payments to fishing permit owners, fishing vessel owners, or both, in a reduction fishery.

Reduction fishery means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, fishing vessel size, geographic area, and any other relevant factor(s).

Reduction loan means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and repayable by a fee under, and in accordance with, § 600.1012, § 600.1013, and § 600.1014.

Reduction payment means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a reduction contract. Additionally, it is payment for reduction to each bidder whose bid NMFS accepts under § 600.1009. In a financed program each reduction payment constitutes a disbursement of a reduction loan's proceeds and is for either revoking a fishing permit or both revoking a fishing permit and withdrawing a vessel from fishing either by scrapping or title restriction.

Reduction permit means any fishing permit revoked in a program in exchange for a reduction payment under a reduction contract.

Reduction vessel means any fishing vessel withdrawn from fishing either by scrapping or title restriction in exchange for a reduction payment under a reduction contract.

Referendum means the voting process under § 600.1010 for approving the fee system for repaying a reduction loan.

Request means a request, under § 600.1001, for a program.

Requester means a Council for a fishery identified in § 600.1001(c), a state governor for a fishery identified in § 600.1001(d), or the Secretary for a fishery identified in § 600.1001(e).

Scrap means to completely and permanently reduce a fishing vessel's hull, superstructures, and other fixed structural components to fragments having value, if any, only as raw materials for reprocessing or for other non-fisheries use.

Subsidized means wholly funded by anything other than a reduction loan.

Treasury percentage means the annual percentage rate at which NMFS must pay interest to the U.S. Treasury on any principal amount that NMFS borrows from the U.S. Treasury in order to generate the funds with which to later disburse a reduction loan's principal amount.

Unprocessed fish means fish in the same form as the fish existed at the time the fish was harvested, unless any difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

Vote means a vote in a referendum.

§ 600.1001 Requests.

(a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

(b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.

(d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.

(e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.

(f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

§ 600.1002 General requirements.

(a) Each program must be: (1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;

(2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and

(3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.

(b) Each CFMP for a reduction fishery must: (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;

(2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(3) Include, for a financed program in a reduction fishery involving only a portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

§ 600.1003 Content of a request for a financed program.

A request for a financed program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.

(d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b).

(g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.

(h) Request that NMFS conduct, at the appropriate time, a referendum under § 600.1010 of this subpart.

(i) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.

(j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.

(k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(1) The characteristics of the fishery;

(2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;

(3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;

(4) The reduction amendment required;

(5) The needs of fishing communities;

(6) Minimizing the program's reduction cost; and

(7) All other relevant factors.

(l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts.

(m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations.

(n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:

(1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least reduction cost and in the minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Establish the appropriate point for NMFS to conduct a pre-bidding referendum and be sufficiently detailed to enable NMFS to readily:

(A) Design, propose, and adopt a timely and reliable implementation plan,

(B) Propose and issue timely and reliable implementation regulations,

(C) Invite bids,

(D) Accept or reject bids, and

(E) Complete a program in accordance with this subpart, and

(ii) Address, consistently with this subpart:

(A) The contents and terms of invitations to bid,

(B) Bidder eligibility,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

(F) Any referendum procedures in addition to, but consistent with, those in § 600.1010, and

(G) All other technical matters necessary to conduct a program;

(2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;

(3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under § 600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;

(4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;

(5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

(i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and

(ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;

(6) Demonstrates how the business plan's proposed program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which

the pre-bidding referendum will be based;

(9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;

(10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;

(11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in § 600.1013 and/or § 600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of § 600.1013 and/or § 600.1014—including, but not limited to:

(i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and

(ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and

(12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.

(o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a program in accordance with this subpart.

§ 600.1004 Accepting a request for, and determinations about initiating, a financed program.

(a) *Accepting a request.* Once it receives a request, NMFS will review any request for a financed program to determine whether the request conforms with the requirements of § 600.1003. If the request does not conform, NMFS will return the request with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the FEDERAL REGISTER requesting public comments on the request. Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record. If, in NMFS' discretion, the comments received in response to such notice warrants it, or other good cause warrants it, NMFS may modify such list by publishing another notice in the FEDERAL REGISTER.

(b) *Determination about initiating a financed program.* After receipt of a conforming request for a financed program, NMFS will, after reviewing and responding to any public comments received in response to the notice published in the FEDERAL REGISTER under paragraph (a) of this section, initiate the program if NMFS determines that:

(1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(3) The program, if successfully implemented, is cost effective;

(4) The reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart; and

(5) The program accords with all other applicable law.

§ 600.1005 Content of a request for a subsidized program.

A request for a subsidized program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.

(d) Project the availability of Federal appropriations or other funding, if any, that completion of the program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.

(f) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (e) of this section.

(g) Include a preliminary development plan that: (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and

(ii) Include:

(A) The contents and terms of invitations to bid,

(B) Eligible bidders,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids, and

(E) The terms of bid acceptances;

(2) Specifies the criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(i) The characteristics of the fishery,

(ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor,

(iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

(vi) The need to minimize the program's reduction cost; and

(3) Demonstrates the program's cost effectiveness.

(h) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(i) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2).

(j) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed implementation plan and proposed implementation regulations.

(k) Include the requester's statement of belief that the program constitutes a reasonably realistic and practical prospect for successfully completing a program in accordance with this subpart.

§ 600.1006 Accepting a request for, and determinations about conducting, a subsidized program.

(a) *Accepting a request.* NMFS will review any request for a subsidized program submitted to NMFS to determine whether the request conforms with the requirements of § 600.1005. If the request does not conform, NMFS will return it with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the FEDERAL REGISTER requesting public comments about the request.

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit the plan to the requester for the requester's reaffirmation of the request. Based on the final development plan, the reaffirmation shall: (1) Certify that the final development plan meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) Certify that the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) Project the date on which the requester will forward any necessary reduction amendment and, if the requester is a Council, proposed regulations to implement the reduction amendment. The requester shall base any necessary reduction amendment on the final development plan.

(d) *Determinations about conducting a subsidized program.* After NMFS' receipt of the requester's reaffirmation, any required reduction amendment, and any proposed regulations required to implement the amendment, NMFS will initiate the program if NMFS determines that:

(1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) The program is reasonably capable of being successfully implemented;

(4) The program, if successfully implemented, will be cost effective; and

(5) The program is in accord with all other applicable provisions of the Magnuson-Stevens Act and this subpart.

§ 600.1007 Reduction amendments.

(a) Each reduction amendment may contain provisions that are either dependent upon or independent of a program. Each provision of a reduction amendment is a dependent provision unless the amendment expressly designates the provision as independent.

(b) Independent provisions are effective without regard to any subsequent program actions.

(c) Dependent provisions are initially effective for the sole limited purpose of enabling initiation and completion of the pre-reduction processing stage of a program.

(d) All dependent provisions of a reduction amendment for a financed program are fully in force and effect for all other purposes only when NMFS either:

(1) For bidding results that conform to the fishing capacity reduction specifications and are not subject to any other condition, notifies bidders, under § 600.1009(e)(3), that reduction contracts then exist between the bidders and the United States; or

(2) For bidding results that do not conform to the fishing capacity reduction specifications or are subject to any other condition, notifies bidders

whose bids NMFS had conditionally accepted, under § 600.1010 (d)(8)(iii), that the condition pertaining to the reduction contracts between them and the United States is fulfilled.

(e) If NMFS does not, in accordance with this subpart and any special provisions in the implementation regulations, subsequently make all reduction payments that circumstances, in NMFS' judgment, reasonably permit NMFS to make and, thus, complete a program, no dependent provisions shall then have any further force or effect for any purpose and all final regulations involving such dependent provisions shall then be repealed.

§ 600.1008 Implementation plan and implementation regulations.

(a) As soon as practicable after deciding to initiate a program, NMFS will prepare and publish, for a 60-day public comment period, a proposed implementation plan and implementation regulations. During the public comment period, NMFS will conduct a public hearing of the proposed implementation plan and implementation regulations in each state that the program affects.

(b) To the greatest extent practicable, NMFS will base the implementation plan and implementation regulations for a financed program on the business plan. The implementation plan for a financed program will describe in detail all relevant aspects of implementing the program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The maximum reduction loan amount, if different from the maximum reduction cost;

(5) The reduction cost funding, if any, other than a reduction loan;

(6) The minimum acceptable reduction level;

(7) The potential amount of the fee;

(8) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(9) The invitation to bid and bidding procedures;

(10) The criteria for determining bid acceptance;

(11) The referendum procedures; and

(12) Any relevant post-referendum reduction procedures other than those in the implementation regulations or this subpart.

(c) NMFS will base each implementation plan and implementation regulations for a subsidized program on the final development plan. The implementation plan will describe in detail all relevant aspects of implementing the program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The reduction-cost funding, if any, other than Federal appropriations;

(5) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(6) The invitation to bid and bidding procedures;

(7) The criteria for determining bid acceptance; and

(8) Any relevant post-bidding program procedures other than those in the implementation regulations or this subpart.

(d) The implementation regulations will:

(1) Specify, for invitations to bid, bids, and reduction contracts under § 600.1009:

(i) Bidder eligibility,

(ii) Bid submission requirements and procedures,

(iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(v) The manner of bid submission and the information each bidder shall supply for NMFS to deem a bid responsive,

(vi) The conditions under which NMFS will accept or reject a bid,

(vii) The manner in which NMFS will accept or reject a bid, and

(viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;

(2) Specify any other special referendum procedures or criteria; and

(3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:

(i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with § 600.1013 and § 600.1014,

(ii) Prospective fee rate determinations, and

(iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

(e) NMFS will issue final implementation regulations and adopt a final implementation plan within 45 days of the close of the public-comment period.

(f) NMFS may repeal the final implementation regulations for any program if:

(1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not subsequently approve an industry fee system based on the bidding results;

(2) For a subsidized program, NMFS does not accept bids; and

(3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

§ 600.1009 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section:

(1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

(i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and

(ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

(2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;

(3) For a financed program in which bidding results do not conform to the fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under § 600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs, NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs—all as otherwise provided in paragraph (a)(3) of this section;

(5) Upon NMFS' acceptance of the bid and tender of a reduction payment, the bidder consents to:

(i) The revocation, by NMFS, of any reduction permit, and

(ii) Where the program also involves the withdrawal of reduction vessels from fishing:

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing in any area subject to the jurisdiction of the United States or any state, territory, commonwealth, or possession of the United States, or

(B) Where reduction vessel scrapping is involved and the reduction vessel's owner does not comply with the owner's obligation under the reduction contract to scrap the reduction vessel, take such measures as necessary to cause the reduction vessel's prompt scrapping. The scrapping will be at the

reduction vessel owner's risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost or expense NMFS incurred in causing the reduction vessel to be scrapped and any other damages NMFS may have incurred and such owner shall be liable to the United States for such cost, expenses, and damages;

(6) Money damages not being an adequate remedy for a bidder's breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, the scrapping of a reduction vessel;

(7) Any reduction payment is available, upon timely and adequately documented notice to NMFS, to satisfy liens, as allowed by law, against any reduction permit/and or reduction vessel; provided, however, that:

(i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder's interest,

(ii) No reduction payment in any way gives rise to any

liability of the United States for the obligation underlying any lien,

(iii) No lien holder has any right or standing, not otherwise provided by law, against the United States in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart, and

(iv) This subpart does not provide any lien holder with any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made, or has agreed to make, any reduction payment. A lien holder is limited to recovery against the holder of the reduction permit or the owner of the reduction vessel as otherwise provided by law; and

(8) Each invitation to bid may specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract or otherwise to ensure completing each program. This includes, but is not limited to, each bidder's certification, subject to the penalties in § 600.1017, of the bidder's full authority to submit each bid and to dispose of the property involved in the bid in the manner contemplated by each invitation to bid.

(b) NMFS will not invite bids for any program until NMFS determines that:

(1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

(2) The final implementation plan is adopted and the final implementation regulations are issued;

(3) All required program funding is approved and in place, including all Federal appropriation and apportionment authority;

(4) Any reduction loan involved is fully approved;

(5) Any non-Federal funding involved is fully available at the required time for NMFS disbursement as reduction payments; and

(6) All other actions necessary to disburse reduction payments, except for matters involving bidding and post-bidding referenda, are completed.

(c) After making the affirmative determinations required under paragraph (b) of this section, NMFS will publish a FEDERAL REGISTER notice inviting eligible bidders to offer to the United States, under this subpart, fishing capacity for reduction.

(d) NMFS may extend a bid closing date and/or a bid expiration date for a reasonable period. NMFS may also issue serial invitations to bid if the result of previous bidding, in NMFS' judgment, warrant this.

(e) After the bid expiration date, NMFS will:

(1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail at each bidder's address of

record, those bidders whose bids NMFS accepts that a reduction contract now exists between them and the United States—subject, where appropriate, to the conditions provided for elsewhere in this subpart.

(f) NMFS will keep confidential the identity of all bidders whose bids NMFS does not accept. In financed programs where bidding results do not conform to the fishing capacity reduction specifications, NMFS also will keep confidential the identity of all bidders whose bids NMFS does accept until after completing a successful post-bidding referendum under § 600.1010.

§ 600.1010 Referenda.

(a) *Referendum success.* A referendum is successful if at least two-thirds of the ballots that qualify to be counted as referendum votes under subparagraph (d)(6) of this section are cast in favor of an industry fee system.

(b) *Pre-bidding referendum*—(1) *Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

(2) *Successful initial pre-bidding referendum.* If the initial pre-bidding referendum is successful, the reduction process will proceed as follows:

(i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted,

(ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

(3) *Unsuccessful initial pre-bidding referendum.* If the initial pre-bidding referendum is unsuccessful, the reduction process will either cease or NMFS may suspend the process pending an appropriate amendment of the business plan and the request.

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under § 600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in any amount materially less than the minimum amount in the fishing capacity reduction specifications.

(d) NMFS will conduct referenda in accordance with the following: (1) *Eligible voters.* The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the FEDERAL REGISTER under § 600.1004(a);

(2) *Ballot issuance.* NMFS will mail, by U.S. certified mail, return receipt requested, a ballot to each eligible voter. Each ballot will bear a randomly derived, 5-digit number assigned to each eligible voter. Each ballot will contain a place for the voter to vote for or against the proposed industry fee

system and a place, adjacent to the 5-digit number, for the signature of the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf. Each ballot will contain a place for the person signing the ballot to print his or her name. NMFS will enclose with each ballot a specially-marked, postage-paid, pre-addressed envelope that each voter shall use to return the ballot to NMFS;

(3) *Voter certification*. Each ballot will contain a certification, subject to the penalties set forth in §600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf;

(4) *Information included on a ballot*. Each ballot mailing will:

(i) Summarize the referendum's nature and purpose,

(ii) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a qualified vote,

(iii) Identify the place on the ballot for the voter to vote for or against the proposed industry fee system, the place on the ballot where the voter shall sign the ballot, and the purpose of the return envelope,

(iv) For each pre-bidding referendum, state:

(A) The fishing capacity reduction specifications,

(B) The reduction loan's repayment term, and

(C) The fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over the loan's term,

(v) For each initial pre-bidding referendum that precedes reduction amendment adoption, state the reduction amendment specifications,

(vi) For each initial pre-bidding referendum that follows reduction amendment adoption, summarize the material aspects of the reduction amendment adopted,

(vii) For each second pre-bidding referendum, summarize how the adopted reduction amendment materially differs from the reduction amendment specifications upon which a successful initial pre-bidding referendum occurred and how this material difference affects the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan,

(viii) For each post-bidding referendum, specify the actual bidding results that do not conform to the fishing capacity reduction specifications, and

(ix) State or include whatever else NMFS deems appropriate;

(5) *Enclosures to accompany a ballot*. Each ballot mailing will include:

(i) A specially-marked, postage-paid, and pre-addressed envelope that a voter must use to return the original of a ballot to NMFS by whatever means of delivery the voter chooses, and

(ii) Such other materials as NMFS deems appropriate;

(6) *Vote qualification*. A completed ballot qualifies to be counted as a vote if the ballot:

(i) Is physically received by NMFS on or before the last day NMFS specifies for receipt of the ballot,

(ii) Is cast for or against the proposed industry fee system,

(iii) Is signed by the voter,

(iv) Is the original ballot NMFS sent to the voter bearing the same 5-digit number that NMFS assigned to the voter, and

(v) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return;

(6) *Vote tally and notification*. NMFS will:

(i) Tally all ballots qualified to be counted as referendum votes,

(ii) Notify, by U.S. mail at the address of record, all eligible voters who received ballots of:

(A) The number of potential voters,

(B) The number of actual voters who returned a ballot,

(C) The number of returned ballots that qualified to be counted as referendum votes,

(D) The number of votes for and the number of votes against the industry fee system, and

(E) Whether the referendum was successful and approved the industry fee

system or unsuccessful and disapproved the industry fee system, and

(iii) If a successful referendum is a post-bidding referendum, NMFS will, at the same time and in the same manner, also notify the bidders whose bids were conditionally accepted that the condition pertaining to the reduction contracts between them and the United States is fulfilled;

(7) *Conclusiveness of referendum determinations.* NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan;

(8) *Ballot confidentiality.* NMFS will not voluntarily release the name of any party who voted. NMFS will restrict the availability of all voter information to the maximum extent allowed by law; and

(9) *Conclusive authorization of industry fee system.* Each successful referendum conclusively authorizes NMFS' imposition of an industry fee system—including the fee payment, collection, and other provisions regarding fee payment and collection under § 600.1013 and § 600.1014—to repay the reduction loan for each financed program that NMFS conducts under this subpart.

§ 600.1011 Reduction methods and other conditions.

(a) *Reduction permits or reduction permits and reduction vessels.* Each program may involve either the surrender and revocation of reduction permits or both the surrender and revocation of reduction permits and the withdrawal from fishing either by title restriction or by scrapping of reduction vessels. No financed program may, however, require such title restriction or scrapping of reduction vessels unless the business plan voluntarily includes the same.

(b) *Reduction permit revocation and surrender.* Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.

(c) *Reduction vessel title restriction or scrapping.* For each program that involves reduction vessel title restriction or scrapping:

(1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

(2) Each reduction vessel owner whose reduction vessel is required to be scrapped shall, upon NMFS' tender of the reduction payment, immediately cease all further use of the reduction vessel and arrange, without delay and at the reduction vessel owner's expense, to scrap the reduction vessel to NMFS' satisfaction, including adequate provision for NMFS to document the physical act of scrapping; and

(3) Each reduction vessel owner, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel and with the reduction permit that could qualify the reduction vessel owner or the reduction permit holder for any present or future limited access system fishing permit in the reduction fishery.

(d) *Fishing permits in a non-reduction fishery.* A financed program that does not involve the withdrawal from fishing or scrapping of reduction vessels

may not require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or restrict or revoke any fishing permit other than a reduction permit in the reduction fishery, except those fishing permits authorizing the incidental harvesting of species in any non-reduction fishery during, and as a consequence of, directed fishing for species in the reduction fishery.

(e) *Reduction vessels disposition*. Where a business plan requires the withdrawal from fishing of reduction vessels as well as the revocation of reduction permits: (1) Each reduction vessel that is not documented under Federal law must in every case always be scrapped, without regard to whether a program is a financed program or a subsidized program;

(2) No financed program may require any disposition of a reduction vessel documented under Federal law other than the title restriction in paragraph (b) of this section unless the business plan volunteers to do otherwise; and

(3) Any subsidized program may require the scrapping of reduction vessels documented under Federal law.

(f) *Reduction payments*. NMFS will disburse all reduction payments in the amount and in the manner prescribed in reduction contracts, except reduction payments that a bidder's reduction-contract nonperformance prevents NMFS from disbursing. In financed programs, the reduction loan's principal amount is the total amount of all reduction payments that NMFS disburses from the proceeds of a reduction loan. Any reduction payment that NMFS, because of a bidder's reduction-contract nonperformance, disburses but subsequently recovers, shall reduce the principal amount of the reduction loan accordingly.

(g) *Effect of reduction-contract nonperformance*. No referendum, no reduction contract, no reduction loan, and no fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan, shall be impaired, invalidated, avoided, or otherwise rendered unenforceable by virtue of any reduction contract's nonperformance. This is without regard to the cause of, or reason for, nonperformance. NMFS shall endeavor to enforce the specific performance of all reduction contracts, but NMFS' inability, for any reason, to enforce specific performance for any portion of such reduction contracts shall not relieve fish sellers of their obligation to pay, and fish buyers of their obligation to collect, the fee necessary to fully repay the full reduction loan balance that results from all reduction payments that NMFS actually makes and does not recover.

(h) *Program completion*. Other than the payment and collection of the fee that repays a reduction loan and any other residual matters regarding reduction payments and the disposition of reduction permits and reduction vessels, a program shall be completed when NMFS tenders or makes all reduction payments under all reduction contracts that circumstances, in NMFS' judgment, reasonably permit NMFS to make.

§ 600.1012 Reduction loan.

(a) *Obligation*. The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a reduction loan shall be discharged by fish sellers paying a fee in accordance with § 600.1013. Fish buyers shall be obligated to collect the fee in accordance with § 600.1013 and to deposit and disburse the fee revenue in accordance with § 600.1014.

(b) *Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection*. The reduction loan shall be:

(1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;

(2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage;

(3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

(4) Subject to such provisions as implementation regulations shall specify for the payment of costs and penalties

for non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and § 600.1014.

(c) *Effect of prospective interest rate.* Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.

§ 600.1013 Fee payment and collection.

(a) *Amount.* The fee amount is the delivery value times the fee rate.

(b) *Rate.* NMFS will establish the fee rate. The fee rate may not exceed 5 percent of the delivery value. NMFS will establish the initial fee rate by calculating the fee revenue annually required to amortize a reduction loan over the reduction loan's term, projecting the annual delivery value, and expressing such fee revenue as a percentage of such delivery value. Before each anniversary of the initial fee rate determination, NMFS will recalculate the fee rate reasonably required to ensure reduction loan repayment. This will include any changed delivery value projections and any adjustment required to correct for previous delivery values higher or lower than projected.

(c) *Payment and collection.* (1) The full fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value, rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2) In the event of any post-delivery payment for fee fish—including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

(3)(i) Each fish seller shall be deemed to be, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, both the fish seller and the fish buyer, and shall be responsible for all requirements and liable for any penalties under this subpart applicable to fish sellers and/or fish buyers, each time that a fish seller sells fee fish to:

(A) Any party whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any party who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other party not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, either with or without processing the fish, or

(C) Any other party who the fish seller has good reason to believe is a party not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, record keeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in accordance this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

(d) *Notification*. (1) At least 30 days before the effective date of any fee or of any fee rate change, NMFS will publish a FEDERAL REGISTER notice establishing the date from and after which the fee or fee rate change is effective. NMFS will then also send, by U.S. mail, an appropriate notification to each affected fish seller and fish buyer of whom NMFS has notice;

(2) When NMFS determines that a reduction loan is fully repaid, NMFS will publish a FEDERAL REGISTER notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send, by U.S. mail, notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail, or if the fish seller or fish buyer otherwise does not receive the notice, of the date fee payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

(e) *Failure to pay or collect*. (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason, if known, for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason, if known, for refusing to pay the fee in accordance with this subpart.

(f) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee payment and/or collection provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

§ 600.1014 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to the Fund subaccount to which the deposit principal relates. The fish buyer shall mail each such check to the Fund subaccount lockbox that NMFS establishes for the receipt of the disbursements for each program. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund subaccount lockbox and the manner and form of settlement sheet by means of the notification in § 600.1013(d).

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date of delivery,

(ii) The seller's identity,

(iii) The weight, number, or volume of each species of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value of each species of fee fish,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the Fund's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;

(2) Total delivery value paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to each Fund lockbox account;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of reduction loans, the financial records of fish buyers and fish sellers in each reduction fishery in order to ensure proper fee payment, collection, deposit, disbursement, accounting, record keeping, and reporting. Fish buyers and fish sellers shall make all records of all program transactions involving post-reduction fish harvests, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, record keeping, and reporting available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so and each price that each fish buyer then pays to each fish seller for the fee fish) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and NMFS' auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes).

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(j) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee collection deposit, disbursement, or records provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

§ 600.1015 Late charges.

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

§ 600.1016 Enforcement.

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

§ 600.1017 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for any party to:

(1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly or unlawfully influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable by specific performance, or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, any reduction contract, or any other reduction process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart, including NMFS' right under such reduction contracts to specific performance;

(8) Fail to fully and properly pay and collect any fee due payable, and collectible under this subpart or otherwise avoid, decrease, interfere with, hinder, or delay any such payment and collection,

(9) Convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(10) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the Fund's lockbox account—all as this subpart requires;

(11) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS–all as this subpart requires;

(12) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(13) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(14) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(15) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(16) Otherwise materially interfere with the efficient and effective conduct of reduction and the repayment of reduction loans under this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide—

including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses—and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

(c) Additionally, NMFS may take any and all appropriate actions, including the communication of action at law, against each party responsible for the non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and/or § 600.1014 to enforce the United States' receipt from such party of any fee—including penalties and all costs of collection—due and owing the United States on account of the reduction loan that such party should have, but did not, pay, collect, deposit, and/or disburse in accordance with § 600.1013 and/or § 600.1014. All such reduction loan recoveries shall be applied to reduce the unpaid balances of reduction loans.

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

AUTHORITY: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117, Pub. L. 107–206, Pub. L. 108–7, Pub. L. 108–199, and Pub. L. 108–447.

SOURCE: 69 FR 53361, Sept. 1, 2004, unless otherwise noted.

§ 600.1100 [Reserved]

§ 600.1101 Inshore fee system for repayment of the loan to harvesters of Pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

(a) *Definition*. In addition to the definitions in the Magnuson-Stevens Act and in § 679.2 of this title, the terms used in this subpart have the following meanings:

American Fisheries Act (AFA) means Title II of Pub.L. 105–277.

Borrower means (individually and collectively) all persons who, after January 1, 2000, harvest fee fish from the IC directed fishing allowance.

Business week means a 7-day period, Saturday through Friday.

Delivery value means the gross ex-vessel value of all fee fish at fish delivery.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated deposit account maintained in a federally chartered national bank for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the loan.

Fee means the six-tenths (0.6) of one cent that fish buyers deduct at fish delivery from the delivery value of each pound of round weight fee fish.

Fee fish means all pollock harvested from the IC directed fishing allowance beginning on February 10, 2000 and ending at such time as the loan's principal and interest are fully repaid.

Fish buyer means the first ex-vessel fish buyer who purchases fee fish from a fish seller.

Fish delivery means the point at which a fish buyer first takes delivery or possession of fee fish from a fish seller.

Fish seller means the harvester who catches and first sells fee fish to a fish buyer.

IC directed fishing allowance means the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

Loan means the loan authorized by section 207(a) of the AFA.

Net delivery value means the delivery value minus the fee.

Subaccount means the Inshore Component Pollock Subaccount of the Fishing Capacity Reduction Fund in the U.S. Treasury for the deposit of all funds involving the loan.

(b) *Loan*—(1) *Principal amount*. The loan's principal amount is $75,000,000 (seventy five million dollars).

(2) *Interest*. Interest shall, from December 30, 1998, when NMFS disbursed the loan, until the date the borrower fully repays the loan, accrue at a fixed rate of 7.09 percent. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(3) *Repayment*. The fee shall be the exclusive source of loan repayment. The fee shall be paid on all fee fish.

(4) *Application of fee receipts*. NMFS shall apply all fee receipts it receives, first, to payment of the loan's accrued

interest and, second, to reduction of the loan's principal balance.

(5) *Obligation*. The borrower shall repay the loan in accordance with the AFA and this subpart.

(c) *Fee payment and collection*—(1) *Payment and collection*. (i) The fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying or promising later to pay the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value or the fish buyer's promise later to pay the net delivery value rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(ii)(A) Each fish seller shall be deemed, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, to be both the fish seller and the fish buyer—and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller—each time that the fish seller sells fee fish to:

(*1*) Any fish buyer whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(*2*) Any fish buyer who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other fish buyer not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, or

(*3*) Any other fish buyer who the fish seller has good reason to believe is a fish buyer not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, recordkeeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(2) *Notification*. (i) NMFS will send an appropriate fee payment and collection commencement notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(ii) When NMFS determines that the loan is fully repaid, NMFS will publish a FEDERAL REGISTER notification that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send an appropriate fee termination notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) *Failure to pay or collect*. (i) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(A) The fish buyer's and fish seller's name, address, and telephone number,

(B) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(C) The quantity and delivery value of fee fish that the fish seller delivered, and

(D) The fish buyer's reason (if known) for refusing to collect the fee in accordance with this subpart;

(ii) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise

NMFS in writing of the full particulars, including:

(A) The fish buyer's and fish seller's name, address, and telephone number,

(B) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(C) The quantity and delivery value of fee fish the fish seller delivered or attempted to deliver,

(D) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(E) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

(d) *Fee collection deposits, disbursements, records, and reports*—(1) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(2) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer has collected through a date not more than 2 calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the subaccount in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(3) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to ''NOAA Inshore Component Pollock Loan Subaccount.'' The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the subaccount's lockbox and the manner and form of settlement sheet by means of the notification in § 600.1101(c).

(4) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(i) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(A) The date of delivery,

(B) The fish seller's identity,

(C) The round weight of fee fish delivered,

(D) The identity of the fishing vessel that delivered the fee fish,

(E) The delivery value,

(F) The net delivery value,

(G) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(H) The date the net delivery value was paid, and

(I) The total fee amount collected;

(ii) For all fee collection deposits to and disbursements from the deposit account:

(A) The dates and amounts of deposits,

(B) The dates and amounts of disbursements to the subaccount's lockbox account, and

(C) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(5) *Annual report.* By January 15, 2001, and by each January 15 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:

(i) Total round weight bought;

(ii) Total delivery value paid;

(iii) Total fee amount collected;

(iv) Total fee collection amounts deposited by month;

(v) Dates and amounts of monthly disbursements to the subaccount lockbox;

(vi) Total amount of interest earned on deposits; and

(vii) Depository account balance at year-end.

(6) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section.

(7) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the financial records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the round weight pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so) are essential audit documentation.

(8) *Confidentiality of records.* NMFS and its auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart, unless otherwise required by law; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes.

(9) *Refunds.* When NMFS determines that the loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(e) *Late charges.* The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed within 5 days of the date due. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

(f) *Enforcement.* In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

(g) *Prohibitions and penalties.* (1) The following activities are prohibited, and it is unlawful for anyone to:

(i) Avoid, decrease, interfere with, hinder, or delay payment or collection of, or otherwise fail to fully and properly pay or collect, any fee due and payable under this subpart or convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(ii) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full

amount of all deposit principal to the subaccount's lockbox account—all as this subpart requires;

(iii) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS–all as this subpart requires;

(iv) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(v) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(vi) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(vii) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(viii) Otherwise materially interfere with the efficient and effective repayment of the loan.

(2) Anyone who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

§ 600.1102 Pacific Coast groundfish fee.

(a) *Purpose*. This section implements the fee for repaying the reduction loan financing the Pacific Coast Groundfish Program authorized by section 212 of Division B, Title II, of Public Law 108–7 and implemented by a final notification in the FEDERAL REGISTER (July 18, 2003; 68 FR 42613).

(b) *Definitions*. Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Borrower means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery, in any or all of the fee-share fisheries, or in both the reduction fishery and any or all of the fee-share fisheries.

Deposit principal means all collected fee revenue that a fish buyer deposits in an account maintained at a federally insured financial institution for the purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the reduction loan.

Fee fish means all fish harvested from the reduction fishery during the period in which any portion of the reduction fishery's subamount is outstanding and all fish harvested from each of the fee-share fisheries during the period in which any portion of each fee-share fishery's subamount is outstanding.

Fee-share fishery means each of the fisheries for coastal Dungeness crab and pink shrimp in each of the States of California and Oregon and the fishery for coastal Dungeness crab and ocean pink shrimp in the State of Washington.

Fee-share fishery subaccount means each of the six subaccounts established in the groundfish program's fund subaccount in which each of the six fee-share fishery subamounts are deposited.

Reduction fishery means all species in, and that portion of, the limited entry trawl fishery under the Federal Pacific Coast Groundfish Fishery Management Plan that is conducted under permits, excluding those registered to whiting catcher-processors, which are endorsed for trawl gear operation.

Reduction fishery subaccount means the subaccount established in the groundfish program's fund subaccount in which the reduction fishery subamount is deposited.

Subamount means each portion of the reduction loan's original principal amount which is allocated either to the

reduction fishery or to any one of the fee-share fisheries.

(c) *Reduction loan amount.* The reduction loan's original principal amount is $35,662,471.

(d) *Subamounts.* The subamounts of the reduction loan amount are:

(1) Reduction fishery, $28,428,719; and

(2) Fee-share fisheries:

(i) California coastal Dungeness crab fee-share fishery, $2,334,334,

(ii) California pink shrimp fee-share fishery, $674,202,

(iii) Oregon coastal Dungeness crab fee-share fishery, $1,367,545,

(iv) Oregon pink shrimp fee-share fishery, $2,228,845,

(v) Washington coastal Dungeness crab fee-share fishery, $369,426, and

(vi) Washington ocean pink shrimp fee-share fishery, $259,400.

(e) *Interest accrual inception.* Interest began accruing on each portion of the reduction loan amount on and from the date each such portion was disbursed.

(f) *Interest rate.* The reduction loan's interest rate is 6.97 percent. This is a fixed rate of interest for the full term of the reduction loan's life.

(g) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term shall be 30 years from March 1, 2004, but each fee shall continue for as long as necessary to fully repay each subamount.

(h) *Reduction loan.* The reduction loan shall be subject to the provisions of § 600.1012 of subpart L, except that:

(1) The borrower's obligation to repay the reduction loan shall be discharged by fish sellers in the reduction fishery and in each of the fee-share fisheries paying the fee applicable to each such fishery's subamount in accordance with § 600.1013 of subpart L, and

(2) Fish buyers in the reduction fishery and in each of the fee-share fisheries shall be obligated to collect the fee applicable to each such fishery's subamount in accordance with § 600.1013 of this subpart.

(i) *Fee collection, deposits, disbursements, records, and reports.* Fish buyers in the reduction fishery and in each of the fee share fisheries shall deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery in accordance with § 600.1014 of this subpart, except that:

(1) *Deposit accounts.* Each fish buyer that this section requires to collect a fee shall maintain an account at a federally insured financial institution for the purpose of depositing collected fee revenue and disbursing the deposit principal directly to NMFS in accordance with paragraph (i)(3) of this section. The fish buyer may use this account for other operational purposes as well, but the fish buyer shall ensure that the account separately accounts for all deposit principal collected from the reduction fishery and from each of the six fee-share fisheries. The fish buyer shall separately account for all fee collections as follows:

(i) All fee collections from the reduction fishery shall be accounted for in a reduction fishery subaccount,

(ii) All fee collections from the California pink shrimp fee-share fishery shall be accounted for in a California shrimp fee-share fishery subaccount,

(iii) All fee collections from the California coastal Dungeness crab fishery shall be accounted for in a California crab fee-share fishery subaccount,

(iv) All fee collections from the Oregon pink shrimp fee-share fishery shall be accounted for in an Oregon shrimp fee-share fishery subaccount,

(v) All fee collections from the Oregon coastal Dungeness crab fee-share fishery shall be accounted for in an Oregon crab fee-share fishery subaccount,

(vi) All fee collections from the Washington ocean pink shrimp fee-share fishery shall be accounted for in a Washington ocean shrimp fee-share fishery subaccount, and

(vii) All fee collections from the Washington coastal Dungeness crab fishery shall be accounted for in a Washington crab fee-share fishery subaccount;

(2) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (i)(1) of this section, all collected fee revenue not previously deposited that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned,

or used for any purpose other than aggregating collected fee revenue for disbursement to the fund in accordance with paragraph (i)(3) of this section. The fish buyer is entitled, at any time, to withdraw interest (if any) on the deposit principal, but never the deposit fee principal itself, for the fish buyer's own use and purposes;

(3) *Deposit principal disbursement*. Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account, provided that the deposit principal then totals $100 or more. If the deposit principal then totals less than $100, the fish buyer need not disburse the deposit principal until either the next month during which the deposit principal then totals $100 or more, or not later than the 14th calendar day after the last calendar day of any year in which the deposit principal has not since the last required disbursement totaled $100 or more, whichever comes first. The fish buyer shall disburse deposit principal by check made payable to the groundfish program's fund subaccount. The fish buyer shall mail each such check to the groundfish program's fund subaccount lockbox that NMFS establishes for the receipt of groundfish program disbursements. Each disbursement shall be accompanied by the fish buyer's fee collection report completed in the manner and form which NMFS specifies. NMFS will, before fee payment and collection begins, specify the groundfish program's fund subaccount lockbox and the manner and form of fee collection report. NMFS will do this by means of the notification in § 600.1013(d) of subpart L. NMFS' fee collection report instructions will include provisions for the fish buyer to specify the amount of each disbursement which was disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts;

(4) *Records maintenance*. Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(i) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(A) The date of delivery,

(B) The fish seller's identity,

(C) The weight, number, or volume of each species of fee fish delivered,

(D) Information sufficient to specifically identify the fishing vessel which delivered the fee fish,

(E) The delivery value of each species of fee fish,

(F) The net delivery value of each species of fee fish,

(G) The identity of the payor to whom the net delivery value is paid, if different than the fish seller,

(H) The date the net delivery value was paid,

(I) The total fee amount collected as a result of all fee fish, and

(J) The total fee amount collected as a result of all fee fish from the reduction fishery and/or all fee fish from each of the six fee-share fisheries; and

(ii) For all collected fee deposits to, and disbursements of deposit principal from, the deposit account include:

(A) The date of each deposit,

(B) The total amount deposited,

(C) The total amount deposited in the reduction fishery subaccount and/or in each of the six fee-share fishery subaccounts,

(D) The date of each disbursement to the Fund's lockbox,

(E) The total amount disbursed,

(F) The total amount disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts, and

(G) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits; and

(5) *Annual report*. No fish buyer needs to submit an annual report about fee fish collection activities unless, during the course of an audit under § 600.1014(g), NMFS requires a fish buyer to submit such a report or reports.

(j) Other provisions. The reduction loan is, in all other respects, subject to

the provisions of § 600.1012 through applicable portions of § 600.1017, except § 600.1014(e).

[70 FR 40229, July 13, 2005, as amended at 71 FR 28, Jan. 3, 2006]

§ 600.1103 Bering Sea and Aleutian Islands (BSAI) Crab species program.

(a) *Purpose*. This section's purpose is to implement the program that Section 144(d) of Division B of Pub. L. 106–554, as amended by section 2201 of Pub. L. 107–20 and section 205 of Pub. L. 107–117, enacted for BSAI crab species.

(b) *Terms*. Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to the program for BSAI crab. Likewise, the terms defined in § 679.2 of this chapter also apply to terms not otherwise defined in either § 600.1000 or this section. The following terms used in this section have the following meanings for the purpose of this section:

Acceptance means NMFS' acceptance, on behalf of the United States, of a bid.

Bid means a bidder's irrevocable offer, in response to an invitation to bid under this section, to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner this section requires, the bidder's reduction fishing interest.

Bid amount means the dollar amount of each bid.

Bidder means either a qualifying bidder bidding alone or a qualifying bidder and a co-bidder bidding together who at the time of bidding holds the reduction fishing interests specified at § 600.1018(e).

Bid crab means the crab that NMFS determines each bidder's reduction/history vessel (see definition) harvested, according to the State of Alaska's records of the documented harvest of crab, from each reduction endorsement fishery and from the Norton Sound fishery during the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10–calendar-year period beginning on January 1, 1990, and ending on December 31, 1999.

Bid score means the criterion by which NMFS decides in what order to accept bids in the reverse auction this section specifies.

Co-bidder means a person who is not a qualifying bidder, but who at the time of bidding owns the reduction/privilege vessel this section requires to be included in a bid and is bidding together with a qualifying bidder.

Crab means the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs pursuant to § 679.2 of this chapter.

Crab license means a License Limitation Program license for crab issued pursuant to § 679.4(k)(5) of this chapter.

Crab reduction permit means a non-interim crab license endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery.

FSD means NMFS' Financial Services Division, located in NMFS' Silver Spring, MD, headquarters office.

Non-crab reduction permit means a fishing license, including all of its predecessor history, for which a bidder is the holder of record on December 12, 2003 and which was issued based on the fishing history of the bidder's -reduction/history vessel.

Norton Sound fishery means the non-reduction fishery defined in § 679.2 of this chapter as the area/species endorsement for Norton Sound red king and Norton Sound blue king crab.

NVDC means the U.S. Coast Guard's National Vessel Documentation Center located in Falling Waters, WV.

Qualifying bidder means a person who at the time of bidding is the license holder of record of a crab reduction permit.

Qualifying voter means a person who at the time of voting in a referendum is the license holder of record either of an interim or a non-interim crab license, except a crab license whose sole area/species endorsement is for the Norton Sound fishery.

RAM Program means NMFS' Restricted Access Management Program located in NMFS' Juneau, AK, regional office.

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of

this chapter defines as area/species endorsements except the area/species endorsement for the Norton Sound fishery.

Reduction fishery means the fishery for all crab covered by the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan under all area/species endorsements that section 679.2 of the chapter defines, except the area/species endorsement for the Norton Sound fishery.

Reduction fishing history means, for each bid, the complete documented harvest of the bidder's reduction/history vessel, upon any part of which such harvest NMFS based issuance of the crab license included in the bid as a crab reduction permit, plus such fishing history, after the issuance of such crab license, of any other vessel upon which the bidder used such crab license.

Reduction fishing interest means, for each bid, the bidder's:

(1) Reduction fishing privilege (see definition);

(2) Crab reduction permit;

(3) Non-crab reduction permit;

(4) Reduction fishing history (see definition); and

(5) Any other claim that could in any way qualify the owner, holder, or retainer of any of the reduction components, or any person claiming under such owner, holder, or retainer, for any present or future limited access system fishing license or permit in any United States fishery (including, but not limited to, any harvesting privilege or quota allocation under any present or future individual fishing quota system).

Reduction fishing privilege means the worldwide fishing privileges of a bid's reduction/privilege vessel (see definition).

Reduction/history vessel means the vessel or vessels which generated the reduction fishing history.

Reduction loan sub-amount means the portion of the original principal amount of reduction loan this section specifies each reduction endorsement fishery must repay with interest.

Reduction/privilege vessel means the vessel designated on a crab license on December 12, 2003.

Referendum means a referendum under this section to determine whether voters approve the fee required to repay this program's reduction loan.

Replacement vessel means a reduction/history vessel which replaced the lost or destroyed one whose reduction fishing history qualified during the general qualification period and the endorsement qualification period and, which under the exceptions in Amendment 10, qualified during the recent participation period.

(c) *Relationship to this subpart*—(1) *Provisions that apply*. The provisions of § 600.1000 through § 600.1017 of this subpart apply to this program except as paragraph (c)(2) of this section provides; and

(2) *Provisions that do not apply*. The following sections, or portions of them, of this subpart do not apply to this program:

(i) All of:

(A) Section 600.1001,

(B) Section 600.1002,

(C) Section 600.1003,

(D) Section 600.1004,

(E) Section 600.1005,

(F) Section 600.1006, and

(G) Section 600.1007,

(ii) The portions of § 600.1008:

(A) Pertaining to an implementation plan,

(B) Pertaining to a 60–day comment period for a proposed implementation regulation,

(C) Pertaining to public hearings in each State that the this program affects,

(D) Pertaining to basing the implementation regulation on a business plan,

(E) Within paragraphs (d)(1)(ii) through (viii),

(F) Within paragraph (d)(2)(ii),

(G) Within paragraph (e), and

(H) Within paragraph (f) and pertaining to fishing capacity reduction specifications and a subsidized program,

(iii) The portions of § 600.1009:

(A) Pertaining to fishing capacity reduction specifications,

(B) Within paragraph (a)(4),

(C) Pertaining to a reduction amendment,

(D) Within paragraph (a)(5)(ii), to the extent that the paragraph is inconsistent with the requirements of this section,

(E) Within paragraph (b)(i), and

(F) Pertaining to an implementation plan,

(iv) The portions of § 600.1010:

(A) Within paragraph (b),

(B) Pertaining to fishing capacity reduction specifications,

(C) Within paragraph (d)(1), and

(D) Within paragraphs (d)(4))(iv) through (vii),

(v) The portions of § 600.1011:

(A) That comprise the last sentence of paragraph (a),

(B) Within paragraph (d), and

(C) Within paragraph (e)(2),

(vi) The portions of § 600.1012:

(A) Within paragraph (b)(3) following the word ''subpart'', and

(B) Within paragraph (b)(3), and

(vii) The last sentence of § 600.1014(f).

(d) *Reduction cost financing*. NMFS will use the proceeds of a reduction loan, authorized for this purpose, to finance 100 percent of the reduction cost. The original principal amount of the reduction loan will be the total of all reduction payments that NMFS makes under reduction contracts. This amount shall not exceed $100 million.

(e) *Who constitutes a bidder*. A bidder is a person or persons who is the:

(1) Holder of record and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's crab reduction permit and the bid's non-crab reduction permit;

(2) Reduction/privilege vessel owner, title holder of record, and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing privilege; and

(3) Retainer and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing history.

(f) *How crab licenses determine qualifying bidders and qualifying voters*—(1) *Non-interim crab licenses*. Each person who is the record holder of a non-interim crab license endorsed for one or more reduction endorsement fisheries is both a qualifying bidder and a qualifying voter and can both bid and vote;

(2) *Interim crab licenses*. Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries is a qualifying voter but not a qualifying bidder and can vote but not bid;

(3) *Crab licenses endorsed solely for the Norton Sound Fishery*. Each person who is the record holder of any crab license endorsed solely for the Norton Sound fishery is neither a qualifying bidder nor a qualifying voter and can neither bid nor vote; and

(4) *Time at which qualifying bidders and voters must hold required crab licenses*. A qualifying bidder must be the record holder of the required crab license at the time the qualifying bidder submits its bid. A qualifying voter must be the record holder of the required crab license at the time the qualifying voter submits its referendum ballot.

(g) *Qualifying bidders and co-bidders*—(1) *Qualifying bidders bidding alone*. There is no co-bidder when a qualifying bidder owns, holds, or retains all the required components of the reduction fishing interest;

(2) *Qualifying bidders bidding together with co-bidders*. When a qualifying bidder does not own the reduction/privilege vessel, the person who does may be the qualifying bidder's co-bidder; and

(3) *Minimum reduction components that qualifying bidders must hold or retain when bidding with co-bidders*. At a minimum, a qualifying bidder must hold the crab reduction permit and the non-crab reduction permit and retain the reduction fishing history. The reduction/privilege vessel may, however, be owned by another person who is a co-bidder.

(h) *Reduction fishing interest*—(1) *General requirements*. Each bidder must:

(i) In its bid, offer to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the reduction fishing interest,

(ii) At the time of bidding, hold, own, or retain the reduction fishing interest and be fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest, and

(iii) Continuously thereafter hold, own, or retain the reduction fishing interest and remain fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest until:

(A) The bid expires without NMFS first having accepted the bid,

(B) NMFS notifies the bidder that NMFS rejects the bid,

(C) NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or

(D) NMFS tenders reduction payment to the bidder;

(2) *Reduction/privilege vessel requirements*. The reduction/privilege vessel in each bid must be:

(i) The vessel designated, at the time this final rule is published in the FEDERAL REGISTER, on a crab license which becomes a bid's crab reduction permit, and

(ii) Be neither lost nor destroyed at the time of bidding;

(3) *Reduction fishing privilege requirements*. The reduction fishing privilege in each bid must be the reduction/privilege vessel's:

(i) Fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108),

(ii) Qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country, and

(iii) Any other privilege to ever fish anywhere in the world;

(4) *Crab reduction permit requirements*. (i) Except as otherwise provided in paragraph (i) of this section, the crab reduction permit must in each bid:

(A) Be the crab license that NMFS issued on the basis of the bidder's reduction fishing history,

(B) Be non-interim at the time each bidder submits its bid, and

(C) Include an area/species endorsement for any one or more reduction endorsement fisheries,

(ii) Although the Norton Sound fishery is not a reduction endorsement fishery, an area/species endorsement for the Norton Sound fishery occurring on a crab reduction permit must be surrendered and revoked (and all fishing history involving it relinquished) in the same manner as all other reduction endorsement fisheries occurring on the crab reduction permit;

(5) *Non-crab reduction permit requirements*. The non-crab reduction permit must in each bid be every license, permit, or other harvesting privilege that:

(i) NMFS issued on the basis of the fishing history of the bidder's reduction/history vessel, and

(ii) For which the bidder was the license holder of record on the effective date of this section; and

(6) *Reduction fishing history requirements*. Except as otherwise provided in paragraph (i) of this section, the reduction fishing history in each bid must that of a single reduction/history vessel.

(i) *Exceptions to the reduction fishing interest requirements*—(1) *Lost or destroyed vessel salvaged*. When a bidder has salvaged a lost or destroyed vessel and has made from the salvaged vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(*3*) of this chapter requires, the crab portion of the reduction fishing history is the salvaged vessel's documented harvest of crab; and

(2) *Lost or destroyed vessel not salvaged*. When a bidder has not salvaged the lost or destroyed vessel but has made from a replacement vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(*3*) of this chapter requires:

(i) The crab portion of the reduction fishing history is the total of the lost or destroyed vessel's documented harvest of crab through the date of such vessel's loss or destruction plus the replacement vessel's documented harvest of crab after such date, and

(ii) For the purposes of this program, the lost or destroyed vessel's documented harvest of crab merges with, and becomes a part of, the replacement vessel's documented harvest of crab; and

(3) *Acquired crab fishing history*. When a bidder, in the manner § 679.4(k)(5)(iv) of this chapter requires, has made a documented harvest of crab from one vessel and has acquired a replacement vessel's documented harvest of crab:

(i) The crab portion of the reduction fishing history is the total of the acquired documented harvest of crab through December 31, 1994, plus the documented harvest of crab after December 31, 1994, of the vessel from which the bidder made the documented crab harvest § 679.4(k)(5)(iv) of this chapter requires, and

(ii) [Reserved]

(iii) For the purposes of this program, the acquired documented harvest of crab merges with, and becomes a part of, the non-acquired documented harvest of crab.

(j) *Determining value of reduction/history vessels' bid crab*—(1) *In each fishery*. NMFS will determine the dollar value of each reduction/history vessel's bid crab in each reduction endorsement fishery and in the Norton Sound Fishery by multiplying each reduction/history vessel's number of pounds of each species of bid crab by the average ex-vessel price per pound that the State of Alaska annually publishes for each crab species in the bid crab; and

(2) *In all fisheries*. NMFS will determine the dollar value of each reduction/history vessel's bid crab in all reduction endorsement fisheries and in the Norton Sound fishery by adding each of the products of the multiplications in paragraph (j)(1) of this section; and

(3) *Crab excluded from bid crab*. A reduction/history vessel's bid crab may not include, to the extent that NMFS has knowledge:

(i) Triangle tanner crab, grooved tanner crab, and any other crab not involved in the various area/species endorsements,

(ii) Discarded crab,

(iii) Crab caught for personal use,

(iv) Unspecified crab, and

(v) Any other crab for which the dollar value, crab fishery, landing date, or harvesting vessel NMFS cannot, for whatever reason, determine.

(k) *Determining bid score*. NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (j)(2) of this section.

(l) *Determining reduction loan subamount*—(1) *Value of all bid crab in each fishery*. NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in each reduction endorsement fishery;

(2) *Value of all bid crab in all fisheries*. NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in all reduction endorsement fisheries plus the Norton Sound fishery;

(3) *Each fishery as a percentage of all fisheries*. NMFS will divide each of the sums in paragraph (l)(1) of this section by the sum in paragraph (l)(2) of this section. The result of this calculation will be the dollar value of all bid crab in each reduction endorsement fishery as a percentage of the dollar value of all bid crab in all reduction endorsement fisheries plus the Norton Sound fishery;

(4) *Applying percentages to loan amount*. NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (l)(3) of this section; and

(5) *Loan sub-amount*. Each of the amounts resulting from the calculation in paragraph (l)(4) of this section will be the reduction loan subamount that a reduction endorsement fishery must repay.

(m) *Prospectively qualifying bidder and voter notification*—(1) *General*. At the appropriate point before issuing an invitation to bid, NMFS will publish a notification in the FEDERAL REGISTER listing all persons who at the time of publishing the notification prospectively are qualifying bidders and qualifying voters;

(2) *Qualifying bidder list*. The prospectively qualifying bidder list will include the names and addresses of record of each license holder of record for all non-interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(3) Qualifying voter list. The prospectively qualifying voter list will include the names and addresses of record of each license holder of record for all non-interim and interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(4) *Basis of lists*. NMFS will base both the lists on the RAM Program's license holder records for crab licenses meeting the requirements of § 679.4(k)(5) of

this chapter as well as the requirements of this section;

(5) *Purpose*. The purpose of the notification is to provide the public notice of:

(i) The prospectively qualifying bidders, and

(ii) The prospectively qualifying voters; and

(6) *Public comment*. Any person who wants to comment about the notification has 30 days from the notification's publication date to do so. Persons should send their comments to both FSD and the RAM Program (at addresses that the notification will specify). Comments may address:

(i) Persons who appear on one or more lists but should not,

(ii) Persons who do not appear on one or more lists but should, and

(iii) Persons who believe their names and/or business mailing addresses appearing on one or more lists are incorrect.

(n) *Invitation to bid*—(1) *Notification*. At the appropriate point after issuing the notification in paragraph (m) of this section, NMFS will publish the invitation to bid in the FEDERAL REGISTER notification further specified in § 600.1009(c) of this subpart, along with a bidding form and terms of capacity reduction agreement. No person may, however, bid at this stage;

(2) *Notification contents*. The invitation to bid notification will state all applicable bid submission requirements and procedures (including, but not limited to, those included in this section). In particular, the invitation to bid notification will:

(i) State the date on which NMFS will invite bids by mailing an invitation to bid to each person on the prospectively qualifying bidder list,

(ii) State a bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iii) State a bid expiration date after which each bid expires unless, prior to that date, NMFS accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(iv) State the manner of bid submission and the information each bidder must submit for NMFS to deem a bid responsive,

(v) State any other information required for bid submission, and

(vi) Include a facsimile of the invitation to bid, along with a bidding form and terms of capacity reduction agreement comprising the entire terms and conditions of the reduction contract under which each bidder must bid and under which NMFS must accept a bid; and

(3) *Mailing*. On the date specified in this notification, NMFS will invite bids by mailing the invitation to bid and a bidding package, including a bidding form terms of capacity reduction agreement, to each person then on the prospectively qualifying bidder list. NMFS will not mail the invitation to bid to any potential co-bidder because NMFS will not then know which bids may include a co-bidder. Each qualifying bidder is solely responsible to have any required co-bidder properly complete the bid. No person may bid before receiving the invitation to bid and the bidding package that NMFS mailed to that person.

(o) *Bids*—(1) *Content*. Each invitation to bid that NMFS mails to a qualifying bidder will have a bid form requiring each bid to:

(i) Identify, by name, regular mail address, telephone number, and (if available) electronic mail address, the qualifying bidder and each co-bidder,

(ii) State the bid amount in U.S. dollars,

(iii) Identify, by crab license number, the qualifying bidder's crab reduction permit and include an exact copy of this crab license (which the RAM Program issued),

(iv) Identify, by vessel name and official number, the bidder's reduction/privilege vessel, and include an exact copy of this vessel's official document (which NVDC issued),

(v) Identify, by license or permit number, each of the bidder's non-crab reduction permits; and include an exact copy of each of these licenses or permits (which the RAM Program issued for licenses or permits involving species under the jurisdiction of NMFS' Alaska Region and which other NMFS

offices issued for licenses or permits involving species under those offices' jurisdiction),

(vi) Identify, separately for crab and for each other species:

(A) The qualifying bidder's reduction fishing history, and

(B) The dates that each portion of the reduction fishing history encompasses; the name and official number of the reduction/history vessel or vessels which gave rise to it; and the dates during which the qualifying bidder owned such vessels or, if the qualifying bidder acquired any reduction fishing history from another person, the name of the person from which the qualifying bidder acquired such reduction fishing history and the manner in which and the date on which the qualifying bidder did so,

(vii) State, declare, and affirm that the qualifying bidder holds the crab reduction permit and retains the complete reduction fishing history, and is fully and legally entitled to offer both in the manner this section requires,

(viii) State, declare, and affirm that either the qualifying bidder or the co-bidder owns the reduction/privilege vessel and holds the non-crab reduction permit and is fully and legally entitled to offer both in the manner that this section requires, and

(ix) Provide any other information or materials that NMFS believes is necessary and appropriate; and

(2) *Rejection*. NMFS, regardless of bid scores, will reject any bid that NMFS believes is unresponsive to the invitation to bid. All bid rejections will constitute final agency action as of the date of rejection. Before rejection, NMFS may, however, contact any bidder to attempt to correct a bid deficiency if NMFS, in its discretion, believes the attempt warranted.

(p) *Acceptance*—(1) *Reverse auction*. NMFS will determine which responsive bids NMFS accepts by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed $100 million. If two or more responsive bid scores are exactly the same, NMFS will first accept the bid that NMFS first received;

(2) *Notification*. NMFS will, after the conclusion of a successful referendum, notify accepted bidders that NMFS had, before the referendum, accepted their bids; and

(3) *Post-acceptance reduction permit transfer*. After NMFS has accepted bids, neither the RAM Program (nor any other NMFS office) will transfer to other persons any reduction permits that accepted bidders included in the bids unless and until FSD advises the RAM Program (or some other NMFS office) that the resulting reduction contracts are no longer in effect because a referendum failed to approve the fee that this section requires to repay this program's reduction loan.

(q) *Reduction contracts subject to successful post-bidding referendum condition*. Although this program involves no fishing capacity reduction specifications under this subpart, each bid, each acceptance, and each reduction contract is nevertheless subject to the successful post-bidding referendum condition that § 600.1009(a)(3) of this subpart specifies for bidding results that do not conform to the fishing capacity reduction specifications.

(r) *Post-bidding referendum*—(1) *Purpose*. NMFS will conduct a post-bidding referendum whose sole purpose is to determine whether, based on the bidding results, qualifying voters who cast referendum ballots in the manner that this section requires authorize the fee required to repay this program's reduction loan;

(2) *Manner of conducting*. NMFS will mail a referendum ballot to each person then on the prospectively qualifying voter list for each crab license that the person holds and otherwise conduct the referendum as specified in § 600.1010 of this subpart;

(3) *One vote per crab license*. Each qualifying voter may cast only one vote for each crab license that each qualifying voter holds;

(4) *Crab license numbers on ballots*. Each referendum ballot that NMFS mails will contain the license number of the prospectively qualifying voter's crab license to which the ballot relates;

(5) *Potential reduction results stated.* Each referendum ballot that NMFS mails will state the aggregate potential reduction results of all the bids that NMFS accepted, including:

(i) The amount of reduction that all accepted bids potentially effect, including:

(A) The number of crab reduction permits, together with each area/species endorsement for which each of these licenses is endorsed,

(B) The number of reduction/privilege vessels and reduction/history vessels, and

(C) The aggregate and average dollar value of bid crab (together with the number of pounds of bid crab upon which NMFS based the dollar value), in each reduction endorsement fishery and in the reduction fishery, for all reduction/history vessels during the period for which NMFS calculates the dollar value of bid crab,

(ii) The reduction loan sub-amount that each reduction endorsement fishery must repay if a referendum approves the fee, and

(iii) Any other useful information NMFS may then have about the potential sub-fee rate initially necessary in each reduction endorsement fishery to repay each reduction loan sub-amount; and

(6) *Notice that condition fulfilled.* If the referendum is successful, NMFS will notify accepted bidders, in the manner that § 600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (q) of this section.

(s) *Reduction method.* In return for each reduction payment, NMFS will permanently:

(1) Revoke each crab reduction permit;

(2) Revoke each non-crab reduction permit;

(3) Revoke each reduction fishing privilege (which revocation will run with the reduction/privilege vessel's title in the manner § 600.1009(a)(5)(ii)(A) of this subpart requires and in accordance with 46 U.S.C. 12108(d));

(4) Effect relinquishment of each reduction fishing history for the purposes specified in this section by noting in the RAM Program records (or such other records as may be appropriate for reduction permits issued elsewhere) that the reduction fishing history has been relinquished under this section and will never again be available to anyone for any fisheries purpose; and

(5) Otherwise restrict in accordance with this subpart each reduction/privilege vessel and fully effect the surrender, revocation, restriction, relinquishment, withdrawal, or extinguishment by other means of all components of each reduction fishing interest.

(t) *Reduction payment tender and disbursement*—(1) *Fishing continues until tender.* Each accepted bidder may continue fishing as it otherwise would have absent the program until NMFS, after a successful referendum, tenders reduction payment to the accepted bidder;

(2) *Notification to the public.* After a successful referendum but before tendering reduction payment, NMFS will publish a notification in the FEDERAL REGISTER listing all proposed reduction payments and putting the public on notice:

(i) Of the crab reduction permits, the reduction/privilege vessels, the reduction fishing histories, and the non-crab reduction permits upon whose holding, owning, retaining, or other legal authority representations accepted bidders based their bids and NMFS based its acceptances, and

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (s) of this section;

(3) *Public response.* The public has 30 days after the date on which NMFS publishes the reduction payment tender notification to advise NMFS in writing of any holding, owning, or retaining claims that conflict with the representations upon which the accepted bidders based their bids and on which NMFS based its acceptances;

(4) *Tender and disbursement parties.* NMFS will tender reduction payments only to accepted bidders, unless otherwise provided contrary written instructions by accepted bidders. Creditors or other parties with secured or other interests in reduction/privilege vessels or reduction permits are responsible to

make their own arrangements with accepted bidders;

(5) *Time of tender*. At the end of the reduction payment tender notification period, NMFS will tender reduction payments to accepted bidders, unless NMFS then knows of a material dispute about an accepted bidder's authority to enter into the reduction contract with respect to any one or more components of the reduction fishing interest that warrants, in NMFS' discretion, an alternative course of action;

(6) *Method of tender and disbursement*. NMFS will tender reduction payment by requesting from each accepted bidder specific, written instructions for paying the reduction payments. Upon receipt of these payment instructions, NMFS will immediately disburse reduction payments in accordance with the payment instructions; and

(7) *Effect of tender*. Concurrently with NMFS' tender of reduction payment to each accepted bidder:

(i) All fishing activity for any species anywhere in the world in any way associated with each accepted bidder's reduction fishing interest must cease,

(ii) Each accepted bidder must retrieve all fixed fishing gear for whose deployment the accepted bidder's reduction/privilege vessel was responsible, and

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (s) of this section.

(u) *Fee payment and collection*—(1) *Fish sellers who pay the fee*. Any person who harvests any crab, but whom ADF&G's fisheries reporting requirements do not require to record and submit an ADF&G fish ticket for that crab, is a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart;

(2) *Fish buyers who collect the fee*. Any person whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for any crab that another person harvested is a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart; and

(3) *Persons who are both fish sellers and fish buyers and both pay and collect the fee*. Any person who harvests any crab, and whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for that crab, is both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

(v) *Fishing prohibition and penalties*—(1) *General*. Fishing, for the purpose of this section, includes the full range of activities defined in the term ''fishing'' in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801),

(2) *Prohibitions*. Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (t)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:

(i) Fish with or attempt to fish with, or allow others to fish with or attempt to fish with, the reduction/privilege vessel anywhere in the world for any species under any conditions and regardless of the reduction/privilege vessel's ownership or registry for so long as the reduction/privilege vessel exists. This prohibition includes, but is not limited to, fishing on the high seas or in the jurisdiction of any foreign country (to the extent prohibited by law) while operating under U.S. flag,

(ii) Place or attempt to place, or allow others to place or attempt to place, the reduction/privilege vessel under foreign flag or registry,

(iii) Operate or attempt to operate, or allow others to operate or attempt to operate, the reduction/privilege vessel under the authority of a foreign country to the extent prohibited by law,

(iv) Otherwise avoid or attempt to avoid, or allow others to avoid or attempt to avoid, the revocation of the reduction fishing privilege with respect to any reduction/privilege vessel, and

(v) Make any claim or attempt to make any claim, or allow others to claim or attempt to make any claim, for any present or future limited access fishing license or permit in any U.S. fishery (including, but not limited to, any quota allocation under any present

or future individual quota allocation system) based in any way on any portion of a reduction fishing interest surrendered, revoked, restricted, relinquished, withdrawn, or extinguished by other means under this section; and

(3) *Penalties*. The activities that this paragraph prohibits are subject to the full penalties provided in § 600.1017 of this subpart, and immediate cause for NMFS to take action to, among other things:

(i) At the reduction/privilege vessel owner's expense, seize and scrap the reduction/privilege vessel, and

(ii) Pursue such other remedies and enforce such other penalties as may be applicable.

(w) *Program administration*—(1) *FSD responsibilities*. FSD is responsible for implementing and administering this program. FSD will:

(i) Issue all notifications and mailings that this section requires,

(ii) Prepare and issue the invitation to bid,

(iii) Receive bids,

(iv) Reject bids,

(v) Score bids,

(vi) Make acceptances,

(vii) Prepare and issue referendum ballots,

(viii) Receive referendum ballots,

(ix) Tally referendum ballots,

(x) Determine referendum success or failure,

(xi) Tender and disburse reduction payments,

(xii) Administer reduction contracts,

(xiii) Administer fees and reduction loan repayment, and

(xiv) Discharge all other management and administration functions that this section requires;

(2) *RAM Program responsibilities*. Upon FSD's advice, the RAM Program (for fishing licenses under the jurisdiction of NMFS's Alaska Region) and any other appropriate NMFS authority (for fishing licenses under the jurisdiction of any other NMFS office) will revoke reduction permits and effect the surrender of fishing histories in accordance with this section; and

(3) *NVDC and MARAD responsibilities*. FSD will advise NVDC, MARAD, such other agency or agencies as may be involved, or all of them to revoke reduction/privilege vessels' fisheries trade endorsements and otherwise restrict reduction/privilege vessels in accordance with this section.

(x) *Reduction loan and reduction loan sub-amounts*. [Reserved]

[68 FR 69337, Dec. 12, 2003. Redesignated at 69 FR 53362, Sept. 1, 2004]

§ 600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.

(a) *Purpose*. As authorized by Public Law 106–554, this section's purpose is to:

(1) In accordance with § 600.1012 of subpart L, establish:

(i) The borrower's obligation to repay a reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with § 600.1013 through § 600.1016 of subpart L, implement an industry fee system for the reduction fishery.

(b) *Definitions*. Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1103 of this subpart expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Crab rationalization crab means the same as in § 680.2 of this chapter.

Crab rationalization fisheries means the same as in § 680.2 of this chapter.

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of this chapter formerly (before adoption of part 680 of this chapter) defined as crab area/species endorsements, except the area/species endorsement for Norton Sound red king. More specifically, the reduction endorsement fisheries, and the crab rationalization fisheries which (after adoption of part 680 of this chapter) correspond to the reduction endorsement fisheries, are:

(1) Bristol Bay red king (the corresponding crab rationalization fishery is Bristol Bay red king crab),

(2) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (the corresponding crab rationalization fisheries are two separate fisheries, one for Bering Sea snow crab and another for Bering Sea Tanner crab),

(3) Aleutian Islands brown king (the corresponding crab rationalization fisheries are the two separate fisheries,

one for Eastern Aleutian Islands golden king crab and another for Western Aleutian Islands golden king crab),

(4) Aleutian Islands red king (the corresponding crab rationalization fishery is Western Aleutian Islands red king crab),

(5) Pribilof red king and Pribilof blue king (the corresponding crab rationalization fishery is Pribilof red king and blue king crab), and

(6) St. Matthew blue king (the corresponding crab rationalization fishery is also St. Matthew blue king crab).

Reduction fishery means the fishery for all crab rationalization crab, excluding CDQ allocations, in all crab rationalization fisheries.

Sub-amount means the portion of the reduction loan amount for whose repayment the borrower in each reduction endorsement fishery is obligated.

(c) *Reduction loan amount*. The reduction loan's original principal amount is $97,399,357.11.

(d) *Sub-amounts*. The sub-amounts are:

(1) For Bristol Bay red king, $17,129,957.23;

(2) For Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi*, $66,410,767.20;

(3) For Aleutian Islands brown king, $6,380,837.19;

(4) For Aleutian Islands red king, $237,588.04;

(5) For Pribilof red king and Pribilof blue king, $1,571,216.35; and

(6) For St. Matthew blue king, $5,668,991.10.

(e) *Interest accrual from inception*. Interest began accruing on each portion of the reduction loan amount on and from the date on which NMFS disbursed each such portion.

(f) *Interest rate*. The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2005 plus 2 percent.

(g) *Repayment term*. For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from January 19, 2005, but each fee shall continue indefinitely for as long as necessary to fully repay each subamount.

(h) *Reduction loan repayment*. (1) The borrower shall, in accordance with § 600.1012, repay the reduction loan;

(2) Fish sellers in each reduction endorsement fishery shall, in accordance with § 600.1013, pay the fee at the rate applicable to each such fishery's subamount;

(3) Fish buyers in each reduction endorsement fishery shall, in accordance with § 600.1013, collect the fee at the rate applicable to each such fishery;

(4) Fish buyers in each reduction endorsement fishery shall in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS not later than the 7th calendar day of each month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by July 1 of each calendar year; and,

(5) The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through § 600.1017.

[70 FR 54656, Sept. 16, 2005, as amended at 71 FR 27210, May 10, 2006]

§ 600.1105 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

(a) *Purpose*. This section implements the capacity reduction program that Title II, Section 219(e) of Public Law 108–447 enacted for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.

(b) *Definitions*. Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Act means Title II, Section 219 of Public Law 108–447.

AI means the Aleutian Islands.

Application Form means the form published on the FLCC's website that sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

Auditor means Jack V. Tagart, Ph.D., d.b.a. Tagart Consulting.

Authorized Party means the individuals authorized by Subsector Members on the application form to execute and submit Offers, Rankings, protests and other documents and/or notices on behalf of Subsector Member.

Ballot means the form found on the auditor's website used to cast a vote in favor of, or in opposition to, the currently Selected Offers.

BS means the Bering Sea.

BSAI means the Bering Sea and the Aleutian Islands.

BSAI Pacific Cod ITAC means the Total Allowable Catch for Pacific cod after the subtraction of the 7.5 percent Community Development Program reserve.

Capacity Reduction Agreement or Reduction Agreement means an agreement entered into by the Subsector Members and the FLCC under which the FLCC is permitted to develop and submit a Capacity Reduction Plan to the Secretary.

Certificate of Documentation (COD) means a document issued by the U.S. Coast Guard's National Documentation Center that registers the vessel with the United States Government.

Closing Vote means a vote held pursuant to paragraph (d)(7) of this section, after two-thirds (⅔) or more of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process, and there are no unresolved Protests or Arbitrations.

Current Offer means an Offer submitted by a Subsector Member to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term ''Current Offer'' includes Selected Offers.

Current Offeror means an Offering Subsector Member that has submitted an Offer to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term ''Current Offeror'' includes Selected Offerors.

Database means the online LLP License database maintained by NMFS as downloaded by the Auditor pursuant to paragraph (c)(1) of this section.

Effective Date means the date the Capacity Reduction Agreement becomes effective pursuant to section 4.e of the Capacity Reduction Agreement.

Fishing Capacity Reduction Contract or Reduction Contract means the contract that any Current Offeror must sign and agree to abide by if NMFS accepts the offer by signing the Reduction Contract.

FLCC Counsel means Bauer Moynihan & Johnson LLP or other counsel representing the FLCC in any review or arbitration under the Capacity Reduction Agreement.

Latent License means an LLP License on which a vessel was not designated at the time an Offer is submitted.

LLP License means a Federal License Limitation Program groundfish license issued pursuant to §679.4(k) of this chapter or successor regulation that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, Pacific cod and hook and line gear.

Longline Subsector means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery as defined in the Act.

Longline Subsector ITAC means the longline catcher processor subsector remainder of the Total Allowable Catch after the subtraction of the 7.5 percent Community Development Program reserve.

Nonoffering Subsector Member shall have the meaning ascribed thereto in paragraph (d)(5)(i) of this section.

Offer Content means all information included in Offers submitted to the Auditor pursuant to paragraph (d)(2)(ii) of this section.

Offer Form means the form found on the Auditor's website used to make an offer.

Offer(s) means a binding offer(s) from a Subsector Member to sell its LLP, right to participate in the fisheries, the fishing history associated with such LLP, and any vessel set forth on the Offer Form submitted by Offeror pursuant to the terms of this Capacity Reduction Agreement.

Opening Date means the first Monday following the Effective Date set forth in paragraph (c)(3) of this section.

Person includes any natural person(s) and any corporation, partnership, limited partnership, limited liability company, association or any other entity whatsoever, organized under the laws of the United States or of a state.

Prequalification Offer shall have the meaning ascribed thereto in paragraph (d)(2)(iii) of this section.

Ranking Form means the form posted by the Auditor pursuant to paragraph (d)(5)(iii) of this section.

Ranking Period shall have the meaning ascribed thereto in paragraph (d)(5)(ii) of this section.

Reduction Fishery means the BSAI non-pollock groundfish fishery.

Reduction Fishing Interests shall have the meaning ascribed thereto in the Fishing Capacity Reduction Contract.

Reduction Plan means a business plan prepared by the Subsector Members in accordance with Section 1 of the Capacity Reduction Agreement and forwarded to the Secretary for approval.

Reduction Privilege Vessel means the vessel listed on the Offeror's License Limitation Program license.

Rejected Offer means an Offer that has been through one or more Rankings and is not a Selected Offer following the latest Ranking Period, with respect to which the Offering Subsector Member's obligations have terminated pursuant to paragraphs (d)(2)(i) and (d)(6)(v) of this section.

Rejected Offeror means a Subsector Member that has submitted an Offer which has been ranked and was not posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

Restricted Access Management (*RAM*) means the Restricted Access Management Program in the Alaska Region, NMFS, located in Juneau, Alaska.

Secretary means the Secretary of Commerce or a designee.

Selected Offer shall have the meaning ascribed thereto in paragraph (d)(6)(iv) of this section.

Selected Offeror means a Subsector Member that has submitted an Offer which has been ranked and is posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

Selection Process means the process set forth in paragraph (d) of this section for selecting the fishing capacity to be removed by the Reduction Plan.

Submission Period(s) or Submitting Period(s) shall have the meaning ascribed thereto in paragraph (d)(3)(ii) of this section.

Subsector Member(s) means a member(s) of the Longline Subsector.

Web site means the internet Web site developed and maintained on behalf of the FLCC for implementation of the Selection Process described herein with a URL address of *http://www.freezerlonglinecoop.org*.

(c) *Qualification and enrollment of subsector members*—(1) *Distribution*. A copy of the Reduction Agreement, Application Form, and Reduction Contract shall be mailed to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, as the Auditor determines from the Database downloaded by the Auditor as of January 30, 2006, regardless of whether the LLP License is indicated in the Database as noninterim and transferable or otherwise.

(2) *Application*. Any person, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may as a Subsector Member apply to enroll with the FLCC to participate in the Reduction Program, by submitting all of the following documents:

(i) Fully executed Reduction Agreement;

(ii) Photocopy of the LLP License(s) evidencing Subsector Member's qualification as a member of the Longline Subsector;

(iii) Unless applying as the holder of a Latent License, a photocopy of Federal Fisheries Permit for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member;

(iv) Unless applying as the holder of a Latent License, a photocopy of the Certificate of Documentation (COD) for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member; and

(v) An executed Application Form which sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer

Ranking Ballots on behalf of the Subsector Member.

(3) *Examination by Auditor*—(i) *In general*. Each application must be submitted to the Auditor who will examine applications for completeness and inconsistencies, whether on the face of the documents or with the Database. Any application which is incomplete or which contains inconsistencies shall be invalid. The Auditor shall notify by e-mail or mail an applicant of the basis for the Auditor's finding an application invalid. An applicant may resubmit a revised application. If the application meets all requirements, the Auditor may accept the application as valid and enroll the applicant.

(ii) *Interim LLP Licenses*. If an LLP License is interim and/or nontransferable, the applicant's enrollment shall be accepted as a Subsector Member and may fully participate in the Selection Process. However, any posting of an Offer submitted with respect to such LLP License shall note the status of such LLP License until that Subsector Member submits to the Auditor a letter from the RAM confirming that it is within the Subsector Member's control to cause the qualifying LLP License to be issued as noninterim and transferable upon withdrawal of all applicable appeals.

(4) *Enrollment period*. Applications that meet all requirements will be accepted until the Selection Process is completed.

(5) *Effective date*. The Effective Date of any Reduction Agreement shall be ten (10) calendar days after written notice is sent by the Auditor to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear (as determined by the Auditor from the Auditor's examination of the Database) advising that the number of Subsector Members that have delivered to the Auditor a complete Application, including a fully executed Reduction Agreement, exceeds seventy percent (70 percent) of the members of the Longline Subsector (as determined by the Auditor from the Auditor's examination of the Database).

(6) *Notice*. All notices related to the effective date of the Reduction Agreement shall be sent by the Auditor via registered mail.

(7) *Withdrawal*. A Subsector Member, unless such Subsector Member is a Current Offeror or Selected Offeror, may terminate the Reduction Agreement at any time with respect to that Subsector Member by giving ten (10) calendar days written notice to the Auditor preferably via e-mail. Withdrawal of a Subsector Member shall not affect the validity of the Reduction Agreement with respect to any other Subsector Members. Once effective, the Reduction Agreement shall continue in full force and effect regardless of whether subsequent withdrawals reduce the number of Subsector Members below that level required to effectuate the Reduction Agreement. Attempted withdrawal by a Current Offeror or Selected Offeror shall be invalid, and such Offer shall remain a binding, irrevocable Offer, unaffected by the attempted withdrawal.

(d) *Selection of fishing capacity to be removed by Reduction Plan*. The fishing capacity removed by the Reduction Plan will be the Reduction Fishing Interests voluntarily offered through the Reduction Plan by offering Subsector Members and as selected by the Nonoffering Subsector Members, up to an aggregate amount of thirty six million dollars ($36,000,000) as set forth in this paragraph (d).

(1) *Overview*. The Selection Process will begin upon the Effective Date of the Reduction Agreement. The Selection Process will alternate on a weekly basis between:

(i) Submitting Periods, during which individual Subsector Members may submit Offers of fishing capacity they wish to include in the Reduction Plan; and

(ii) Ranking Periods, during which Nonoffering Subsector Members will rank the submitted Offers.

(2) *Offers*—(i) *Binding agreement*. An Offer from a Subsector Member shall be a binding, irrevocable offer from a Subsector Member to relinquish to NMFS the Reduction Fishing Interests for the price set forth on the Offer contingent on such Offer being a Selected Offer at the closing of the Selection Process. Once submitted, an Offer may not be revoked or withdrawn while

that Offer is a Current Offer or Selected Offer. An Offer that is submitted by a Subsector Member, but is not a Selected Offer during the subsequent Ranking Period, shall be deemed to be terminated and the Subsector Member shall have no further obligation with respect to performance of that Offer.

(ii) *Offer content*. All Offers submitted to the Auditor shall include the following information: LLP License number; LLP License number(s) of any linked crab LLP Licenses; license MLOA (MLOA—maximum length overall of a vessel is defined at § 679.2 of this chapter); the license area, gear and species endorsements; a summary of the Pacific cod catch history for the calendar years 1995–2004; and the offered price. The Offer shall also state whether a vessel is currently designated on the LLP License and as such will be withdrawn from all fisheries if the Offer is selected for reduction in the Reduction Plan. If so, the Offer shall identify such vessel by name, official number, and current owner. In addition, the Offer shall provide a summary of the Pacific cod catch history for the calendar years 1995–2004 of the vessel to be retired from the fisheries. All summary catch histories included in Offers shall be calculated utilizing both the weekly production report and best blend methodology and shall separately state for each methodology the Pacific cod catch in metric tons and as a percentage of the overall catch for the longline catcher processor subsector on an annual basis for each of the required years. If the vessel stated to be withdrawn from the fisheries is not owned by the LLP License owner of record, the Offer shall be countersigned by the owner of record of the vessel. An Offer offering a Latent License shall state on the Offer Form that the offered LLP License is a Latent License. The Offer Form shall also include a comment section for any additional information that Offerors wish to provide to the Subsector Members concerning the Offer.

(iii) *Prequalification of Offers*. A Subsector Member may submit a Prequalification Offer to the Auditor at any time prior to the Opening Date. A Prequalification Offer shall contain all elements of an Offer, except that a price need not be provided. The Auditor shall notify the Subsector Member submitting a Prequalification Offer as to any deficiencies as soon as practicable. All details of a Prequalification Offer shall be kept confidential by the Auditor.

(3) *Submitting an Offer*—(i) *Offer submission*. Commencing on the first Tuesday following the Opening Date and during all Submission Periods until the Selection Process is closed, any Subsector Member may submit an Offer. All Offers are to be on the applicable form provided on the FLCC website, executed by an Authorized Party and submitted to the Auditor by facsimile. Any Subsector Member may submit an Offer during any Submission Period, even if that Subsector Member has not submitted an Offer in any previous Submission Period. If a Subsector Member holds more than one LLP License, such Subsector Member may, but is not required to, submit an Offer for each LLP License held during a Submission Period.

(ii) *Submission Periods*. The initial Submission Period shall commence at 9 a.m. (Pacific time) on the Tuesday following the Opening Date and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Submission Periods shall commence at 9 a.m. (Pacific time) on the first Tuesday following the preceding Ranking Period and end at 5 p.m. (Pacific time) on the Friday of that week. All times set forth in the Reduction Agreement and used in the Offer process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology.

(iii) *Validity of Offer*. The Auditor shall examine each Offer for consistency with the Database and information contained in the enrollment documents. If there is an inconsistency in the information contained in the Offer, any of the elements required of an Offer pursuant to paragraph (d)(2)(ii) of this section are missing, or the Auditor does not receive the original Offer Form before the Offers are to be posted pursuant to paragraph (d)(4) of this section, the Auditor shall notify the offering Subsector Member by e-mail or mail that the Offer is nonconforming as soon as practicable after discovering

the basis of invalidity. The Subsector Member may submit a revised, conforming Offer prior to the close of that Submission Period or, in any subsequent Submission Period. Only one Offer may be submitted with respect to an LLP License during a Submission Period. In the event a Subsector Member submits more than one Offer with respect to an LLP License during a Submission Period, the first conforming Offer received by the Auditor shall be binding and irrevocable and any subsequent Offers shall be deemed invalid.

(iv) *Warranty*. By submitting an Offer, the Offering Subsector Member, warrants and represents that the Offering Subsector Member has read and understands the terms of the Reduction Agreement, the Offer, and the Reduction Contract and has had the opportunity to seek independent legal counsel regarding such documents and/or agreements and the consequences of submitting an Offer.

(4) *Posting Offers*—(i) *Current offers*. For each Offer received during a Submission Period, the Auditor shall post on the Website no later than 5 p.m. (Pacific time) on the following Tuesday all of the details of such Offer as set forth on the Offer Form. In addition, the Auditor shall post, as available to Auditor, a summary by year of up to ten (10) years catch history during the period 1995–2004 in total round weight equivalents and percentage of Longline Subsector ITAC harvested for any vessel that is included in the Offer. Subsector Member (or vessel owner, if other than the Subsector Member) expressly authorizes Auditor to release the catch history summary information previously prepared for that Subsector Member or vessel owner by the Auditor as part of the analysis of FLCC's membership's catch history previously conducted by the Auditor on behalf of the FLCC.

(ii) *Posting order*. Offers shall be posted on the Website by the Auditor in alphabetical order of the Offering Subsector Member's name.

(iii) *Questions as to Offer*. The Auditor shall respond to no questions from Subsector Member regarding Offers except to confirm that the posting accurately reflects the details of the Offer. If an Offering Subsector Member notices an error in an Offer posting on the Website, such Subsector Member shall notify the Auditor as soon as practicable. The Auditor shall review such notice, the posting and the original Offer. If an error was made in posting the Auditor shall correct the posting as soon as practicable and notify the Subsector Members via e-mail or mail of the correction. In the event such an error is not discovered prior to Ranking, an Offering Subsector Member shall be bound to the terms of the submitted Offer, not the terms of the posted Offer.

(iv) *Archive*. The Auditor shall maintain on the Website an archive of prior Offers posted, which shall be available for review by all Subsector Members.

(5) *Ranking*—(i) *Eligibility*. Each Subsector Member that has not submitted an Offer during the preceding Submission Period, or whose vessel is not included as a withdrawing vessel in an Offer during the preceding Submission Period (i.e., a Nonoffering Subsector Member), may submit to the Auditor a Ranking Form during a Ranking Period. With respect to Ranking, a Subsector Member that holds more than one LLP License may participate in the Ranking process for each LLP License not included in an Offer.

(ii) *Ranking Period*. The initial Ranking Period shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Ranking Periods shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week.

(iii) *Ranking Form*. Prior to each Ranking Period, the Auditor will post a Ranking Form on the Website in ''pdf'' file format. Each eligible Subsector Member wishing to rank the current Offers shall rank the Offers on the Ranking Form numerically in the Subsector Member's preferred order of purchase. The Offer that Subsector Member would most like to have accepted should be ranked number one (1), and subsequent Offers ranked sequentially until the Offer that the Subsector Member would least like to see

accepted is ranked with the highest numerical score. A Subsector Member wishing to call for a Closing Vote shall, in lieu of ranking the Current Offers, mark the Ranking Form to accept the Selected Offers selected during the prior Ranking Period and close the Selection Process. To be valid, the Ranking Form must rank each Current Offer listed on the Ranking Form or, if applicable, be marked to call for a Closing Vote. Ranking Forms shall be submitted by sending a completed Ranking Form, signed by an Authorized Party, to the Auditor by facsimile or mail prior to the end of the Ranking Period. A Subsector Member is not required to rank the Offers during a Ranking Period or call for a Closing Vote.

(iv) *Validity of Subsector Member Ranking*. The Auditor shall examine each Ranking Form for completeness, whether the form either ranks the Offers or calls for a Closing Vote (but not both), and authorized signature. Any incomplete or otherwise noncompliant Ranking Form(s) shall be invalid, and shall not be included in the Rankings of the Current Offers. The Auditor shall notify the Subsector Member of the reason for declaring any Ranking Form invalid as soon as practicable. A Subsector Member may cure the submission of an invalid Ranking Form by submitting a complying Ranking Form if accomplished before the end of the applicable Ranking Period.

(6) *Ranking results*—(i) *Compiling the rankings*. Unless two-thirds (⅔) of the Nonoffering Subsector Members have called for a Closing Vote, the Auditor shall compile the results of the Ranking Forms by assigning one point for each position on a Ranking Form. That is, the Offer ranked number one (1) on a Ranking Form shall be awarded one (1) point, the Offer ranked two (2) shall receive two (2) points, and continuing on in this manner until all Offers have been assigned points correlating to its ranking on each valid Ranking Form. The Offer with the least number of total points assigned shall be the highest ranked Offer, and the Offer with the greatest total points assigned shall be the lowest ranked Offer.

(ii) *Posting rankings*. The Auditor shall post the results of the compilation of the Ranking Forms on the Website in alphabetical order based on the Offering Subsector Member's name no later than 5 p.m. (Pacific time) on the Monday following the Ranking Period. The Auditor shall post the highest consecutive ranking Offers that total thirty six million dollars ($36,000,000) or less. Those Offering Subsector Members whose Offers are posted shall be deemed Selected Offerors and their Offers shall be deemed Selected Offers. Those Offering Subsector Members whose Offers are not posted shall be deemed Rejected Offerors.

(iii) *Selected Offer information or confidentiality*. The Auditor shall post the name of the Offering Subsector Member, the amount of the Offer, and a summary of the total number of Ranking Forms received and the number of such forms on which the Members called for a Closing Vote. Other than the foregoing, the Auditor shall not post any details of the compilation of the Ranking Forms.

(iv) *Selected Offerors*. Selected Offerors may not withdraw their Offers unless in subsequent rankings their Offers no longer are within the highest ranking Offers and they become Rejected Offerors. A Selected Offeror may, however, modify a Selected Offer solely to the extent such modification consists of a reduction in the Offer price. A Selected Offeror may submit a modified Offer to the Auditor during the next Offering Period as set forth in paragraph (d)(3) of this section. Unless a Selected Offeror becomes a Rejected Offeror in a subsequent Ranking, a Selected Offeror shall be bound by the terms of the lowest Selected Offer submitted as if such modified Offer had been the original Selected Offer. In the event a Selected Offeror submits a modified Offer and such Offer is not ranked because sufficient votes are received to call for a Closing Vote, the previously Selected Offer shall remain the Selected Offer.

(v) *Rejected Offerors*. The Offer of a Rejected Offeror is terminated and the Rejected Offeror is no longer bound by the terms of its Offer. A Rejected Offeror may, at its sole discretion, resubmit the same Offer, submit a revised Offer, or elect not to submit an Offer during

any subsequent Submission Period until the Selection Process is closed.

(vi) *Ties*. In the event there is a tie with respect to Offers which results in the tied Offers exceeding thirty-six million dollars ($36,000,000), the tied Offers and all Offers ranked lower than the tied Offers shall be deemed to be rejected and the Rejected Offerors may, at their option, submit an Offer in a subsequent Submission Period.

(vii) *Archive*. Auditor shall maintain on the Website an archive of prior Offer Rankings as posted over the course of the Selection Process, which shall be available for Subsector Member review.

(7) *Closing*. The Selection Process will close when two-thirds (⅔) or more of the Nonoffering Subsector Members of the Longline Subsector, as determined by the Auditor, affirmatively vote to accept the Selected Offerors selected during the prior Ranking Period as part of the Reduction Plan to be submitted to the Secretary.

(i) *Call for Vote*. A Closing Vote will be held when: at least two-thirds (⅔) of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process in lieu of Ranking the current Offers; and there are no unresolved Protests or Arbitrations. The Auditor shall notify all Subsector Members by e-mail or mail and posting a notice on the Website as soon as practicable that a Closing Vote is to be held. Such notice shall state the starting and ending dates and times of the voting period, which shall be not less than three (3) nor more than seven (7) calendar days from the date of such notice. A voting period shall commence at 9 a.m. (Pacific time) on Monday and end at 5 p.m. on the Friday of that week.

(ii) *Voting*. No less than three (3) calendar days prior to the voting period, the Auditor will post a Closing Ballot on the Website in ''pdf'' file format. Each eligible Nonoffering Subsector Member wishing to vote shall print out the Closing Ballot, and, with respect to each of the currently Selected Offers on the Closing Ballot, vote either in favor of or opposed to accepting that Selected Offer and submit a completed and signed Closing Ballot to the Auditor preferably by facsimile prior to the end of the Voting Period.

(iii) *Ballot verification*. The Auditor shall examine each submitted Closing Ballot for completeness and authorized signature. Any incomplete Closing Ballot shall be void, and shall not be included in the voting results. The Auditor shall not notify the Subsector Member of an invalid Closing Ballot.

(iv) *Voting results*. The Auditor shall post the results of the Vote as soon as practicable after voting closes. Each Offer on the Closing Ballot that receives votes approving acceptance of such Offer from two-thirds (⅔) or more of the total number of Nonoffering Subsector Members shall be a Selected Offeror and shall be the basis for the Reduction Plan submitted to NMFS. Any Offer on the Closing Ballot that does not receive such two-thirds (⅔) approval shall be rejected and shall not be included among the Offers included among the Reduction Plan submitted to NMFS.

(v) *Notification to NMFS*. Upon closing of the Selection Process, FLCC shall notify NMFS in writing of the identities of the Selected Offerors and provide to NMFS a completed and fully executed original Reduction Agreement from each of the Selected Offerors and a certified copy of the fully executed Reduction Agreement and Reduction Contract.

(e) *Submission of Reduction Plan, including repayment*. Upon completion of the offering process, the FLCC on behalf of the Subsector Members shall submit to NMFS the Reduction Plan which shall include the provisions set forth in this paragraph (e).

(1) *Capacity reduction*. The Reduction Plan shall identify as the proposed capacity reduction, without auction process, the LLP Licenses as well as the vessels and the catch histories related to the LLP Licenses, linked crab LLP Licenses, and any other fishing rights or other interests associated with the LLP Licenses and vessels included in the Selected Offers. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback were accepted by votes of the Subsector Members, will together with the FLCC's supporting documents

and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to NMFS for approval on behalf of the Secretary of Commerce.

(2) *Loan repayment*—(i) *Term.* As authorized by Section 219(B)(2) of the Act, the capacity reduction loan (the ''Reduction Loan'') shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed thirty-six million dollars ($36,000,000), but may be less if the reduction cost is less. Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full.

(ii) *Interest.* The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.

(iii) *Fees.* The Reduction Loan shall be repaid by fees collected from the Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Hook & Line, Catcher Processor (Longline Subsector; sometimes referred to as the ''H&LCP Subsector'') portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the number of pounds in a metric ton). In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.

(A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal $2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound. [2,900,000 /(100,000 × 2,205) = .01315]. The fee will be accessed and collected on Pacific cod to the extent possible and if not, will be accessed and collected as provided for in this paragraph (e).

(B) Fees must be accessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

(C) The additional fee will be limited to the amount necessary to amortize the remaining twelve months principal and interest in addition to the 5 percent fee accessed against Pacific cod. The additional fee will be a minimum of one cent per pound. In the event that collections exceed the total principal and interest needed to amortize the payment due, the principal balance of the loan will be reduced. To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues to ensure it is equal to or less than 5 percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason

NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post reduction fishery participants.

(D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fisheries' fee rate to the maximum 5 percent of the revenues for Pacific cod and the species mentioned in paragraph (e)(2)(iii)(B), apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iv) *Reduction loan*. NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs (§ 600.1000 *et seq.*). The reduction loan shall be subject to the provisions of § 600.1012, except that: the borrower's obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.

(v) *Collection*. The LLP License holder of the vessel harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by that LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.

(vi) *Record keeping and Reporting*. The holder of the LLP License on which a vessel harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable record keeping and reporting requirements.

(3) *Agreement with Secretary*. Each Selected Offeror, and vessel owner if not the Subsector Member, that has submitted a Selected Offer shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. Any and all LLP License(s) and or vessels set forth on a Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.

(f) *Decisions of the Auditor and the FLCC*. Time is of the essence in developing and implementing a Reduction Plan and, accordingly, the Offerors shall be limited to, and bound by, the decisions of the Auditor and the FLCC.

(1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings shall be solely ministerial in nature. That is, the Auditor will verify whether the documents submitted by Subsector Members are, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and, signed by an Authorized Party. The Auditor may presume the validity of all signatures on documents submitted. The Auditor shall not make substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents is material).

(2) [Reserved]

(g) *Enforcement/specific performance*. The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Act is both unique and finite and that failure of a Selected Offeror, and vessel owner, if not a Subsector Member, to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC, the Subsector Members and other Selected Offerors. Accordingly, the parties to

the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror, and vessel owner if not a Subsector Member, to fulfill its obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.

(h) *Miscellaneous*—(1) *Time/Holidays*. All times related to the Selection Process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology. In the event that any date occurring within the Selection Process is a Federal holiday, the date shall roll over to the next occurring business day.

(2) *Termination*. The Reduction Agreement shall automatically terminate if no vote of acceptance is completed by December 31, 2007. The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.

(3) *Choice of law/venue*. The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

(4) *Incorporation*. All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.

(5) *Counterparts*. The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.

(i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

(ii) [Reserved]

(i) *Amendment*. Subsector Member acknowledges that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(j) *Warranties*. Subsector Member must expressly warrant and represent in the Reduction Agreement that:

(1) Subsector Member has had an opportunity to consult with Subsector Member's attorney or other advisors of Subsector Member with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;

(2) Subsector Member has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of Subsector Member;

(3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of

the governing documents of Subsector Member;

(4) The person executing the Reduction Agreement has been duly authorized by Subsector Member to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and

(5) Subsector Member has taken all actions necessary for the Reduction Agreement to constitute the valid and binding obligation of Subsector Member, enforceable in accordance with its terms.

(k) *Approval of the Reduction Plan.* Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and Subpart M to this part must be found by the Assistant Administrator of NMFS, to:

(1) Be consistent with the requirements of Section 219(e) of the FY 2005 Appropriations Act (Public Law 108–447);

(2) Be consistent with the requirements of Section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);

(3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;

(4) Not require a bidding or auction process;

(5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

(6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(l) *Referenda.* The provisions of § 600.1010 (including §§ 600.1004(a), 600.1008, 600.1009, 600.1013, 600.1014, and 600.1017(a)(5), (6) and (7)) shall apply to the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

APPENDIX TO § 600.1105—FISHING CAPACITY REDUCTION CONTRACT: BERING SEA AND ALEUTIAN ISLANDS LONGLINE CATCHER PROCESSOR SUBSECTOR

FISHING CAPACITY REDUCTION CONTRACT: BERING SEA AND ALEUTIAN ISLANDS LONGLINE CATCHER PROCESSOR SUBSECTOR

This agreement, (the ''Reduction Contract'') is entered into by and between the party or parties named in section 46 of this contract entitled, ''Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification,'' as the qualifying Offeror and as the co-Offeror (if there is a co-Offeror) (collectively the ''Offeror'') and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (''NMFS''). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Offeror's offer, subject to the condition subsequent of NMFS' formal notification of a successful referendum.

Witnesseth

Whereas, Section 219, Title II, Division B of the Consolidated Appropriations Act, 2005, as enacted on December 8, 2004, (the ''Act'') authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands (''BSAI'') non-pollock groundfish fishery as set forth in the Act;

Whereas, the longline catcher processor subsector (the ''Longline Subsector'') is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act;

Whereas, the Freezer Longline Conservation Cooperative (the ''FLCC'') has developed and is submitting to NMFS concurrently with this Reduction Contract a capacity reduction plan for the Longline Subsector (the ''Reduction Plan'');

Whereas, the selection process will be pursuant to the fishing capacity Reduction Contract and the Reduction Plan;

Whereas, the term ''Reduction Fishery'' is defined by the Reduction Plan as the longline catcher processor subsector of the BSAI non-pollock groundfish fishery;

Whereas, the Reduction Plan's express objective is to permanently reduce harvesting

capacity in the Reduction Fishery; Whereas, NMFS implements the Reduction Plan pursuant to Section 219 of the Act as well as the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)–(e))(as excepted by the Act, including inter alia, any requirement that the Reduction Plan include a bidding or auction process) and other applicable law;

Whereas, NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Reduction Plan, (50 CFR 600.1000 *et seq.*);

Whereas, NMFS can implement the Reduction Plan only after giving notice to all members of the Longline Subsector of the Reduction Plan pursuant to Section 219(3)(b) of the Act and approval of the Reduction Plan by referendum of the Longline Subsector; and

Whereas, this Reduction Contract is submitted by Offeror and the FLCC as an integral element of the Reduction Plan and is expressly subject to the terms and conditions set forth herein, the framework regulations, the final rule (as used in this contract ''final rule'' means the final rule promulgated by NMFS which sets forth the regulations implementing the Reduction Plan for the Longline Subsector) and applicable law.

Now therefore, for good and valuable consideration and the premises and covenants hereinafter set forth the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. *Incorporation of Recitals*. The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. *Further Incorporation*. The Act, framework regulations, final rule and any other rule promulgated pursuant to the Act are expressly incorporated herein by this reference. In the event of conflicting language, the framework regulations, the final rule and any other rule promulgated pursuant to the Act, take precedence over the Reduction Contract.

3. *Contract Form*. By completing and submitting the Reduction Contract to NMFS the Offeror hereby irrevocably offers to relinquish its Reduction Fishing Interests. If NMFS discovers any deficiencies in the Offeror's submission to NMFS, NMFS may, at its sole discretion, contact the Offeror in an attempt to correct such offer deficiency. ''Reduction Fishing Interests'' means all of Offeror(s) rights, title and interest to the Groundfish Reduction Permit, Reduction Permit(s), Reduction Fishing Privilege and Reduction Fishing History as defined in this Reduction Contract.

4. *Groundfish Reduction Permit*. Offeror expressly acknowledges that it hereby offers to permanently surrender, relinquish, and have NMFS permanently revoke the valid non-interim Federal License Limitation Program groundfish license issued pursuant to 50 CFR 679.4(k) (or successor regulation) endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pacific cod, and hook and line gear identified in section 46 of this contract as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License and any offered and accepted interim permit that Offeror causes to become a non-interim permit, (the ''Groundfish Reduction Permit'').

5. *Reduction Permit(s)*. Offeror hereby acknowledges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke any and all Federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License, (the ''Reduction Permits'').

6. *Reduction Privilege Vessel*. The Reduction Privilege Vessel is the vessel listed on the Offeror's License Limitation Program license.

7. *Reduction Fishing Privilege*. If a vessel is specified in section 46 of this contract (the ''Reduction Privilege Vessel''), Offeror hereby acknowledges that Offeror offers to relinquish and surrender the Reduction Privilege Vessel's fishing privilege and consents to the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Privilege Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Privilege Vessel's: fisheries trade endorsement under the Commercial Fishing Industry Vessel Anti-Reflagging Act (46 U.S.C. 12108); eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the ''Reduction Fishing Privilege''). Offeror agrees to instruct the United States Coast Guard's Vessel Documentation Center to remove the fishery endorsement from the Reduction Privilege Vessel. If the Reduction Privilege Vessel is not a federally documented vessel, the Offeror offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.

8. *Reduction Fishing History*. Offeror surrenders, relinquishes, and consents to NMFS'

permanent revocation of the following Reduction Fishing History (the ''Reduction Fishing History''):

a. The Reduction Privilege Vessel's full and complete documented harvest of groundfish;

b. For any documented harvest of the Reduction Privilege Vessel whatsoever, including that specified in section 8 of this contract, any right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and documented harvest which could ever qualify any party for any future limited access system fishing license, permit, and other harvest authorization of any kind; including without limitation crab LLP licenses linked to License Limitation Program (''LLP'') licenses, state fishing rights appurtenant to Reduction Fishing Vessels, and all fishing history associated therewith, but without prejudice to any party who before submission of this offer may have for value independently acquired the fishing history involving any such documented harvest;

c. Any documented harvest on any other vessel (Reduction Fishing Vessel) that gave rise to the Groundfish Reduction Permit; and

d. All fishing history associated with the latent LLP license identified on the Selected Offer and any fishing history associated with the fishing vessel that gave rise to the latent LLP license that remains in the Offeror's possession as of August 11, 2006 (*i.e.*, date of publication of the proposed rule in the FEDERAL REGISTER).

9. *Halibut, Sablefish and Crab IFQs Excluded.* Notwithstanding any other provision of this Reduction Contract, no right, title and/or interest to harvest, process or otherwise utilize individual fishing quota (''IFQ'') quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR parts 679 and 680, nor crab LLP license history to the extent necessary for the issuance of crab IFQ pursuant to 50 CFR part 680 as in effect as of the date of this Contract, shall be included among Offeror's Reduction Fishing Interests.

10. *Representations and Warranties.* Offeror represents and warrants that, as of the date of submission of this Reduction Contract, Offeror is:

a. The holder of record, according to NMFS' official fishing license records, at the time of offer, of the Groundfish Reduction Permit and the Reduction Permit(s).

b. The Reduction Privilege Vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, at the time of offer, and that the Reduction Privilege Vessel is neither lost nor destroyed at the time of offer.

c. In retention of and fully and legally entitled to offer and dispose of hereunder, full and complete rights to the Reduction Privilege Vessel's full and complete Reduction Fishing History necessary to fully and completely comply with the requirements of section 8 of this contract.

11. *Offer Amount.* NMFS' payment to Offeror in the exact amount of the amount set forth by Offeror in section 46 of this contract is full and complete consideration for the Offeror's offer.

12. *Additional Offer Elements.* Offeror shall include with its offer an exact photocopy of the Reduction Privilege Vessel's official vessel documentation or registration (i.e., the certificate of documentation the U.S. Coast Guard's National Vessel Documentation Center issued for federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the Groundfish Reduction Permit and all Reduction Permit(s). The Offeror shall also include with the offer all other information required in this Reduction Contract and otherwise comply with Reduction Contract requirements.

13. *Use of Official Fishing License or Permit Databases.* Offeror expressly acknowledges that NMFS shall use the appropriate official governmental fishing license or permit database to:

Determine the Offeror's address of record; verify the Offeror's qualification to offer; determine the holder of record of the Groundfish Reduction Permit and Reduction Permit(s); and verify the Offeror's inclusion in the offer of all permits and licenses required to be offered in the Offer.

14. *Use of National Vessel Documentation Center Database.* Offeror expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the owner of record for a federally documented Reduction Privilege Vessel and the appropriate State records to determine the owner of record of a non-federally documented Reduction Privilege Vessel.

15. *Offeror to Ensure Accurate Records.* Offeror shall, to the best of its ability, ensure that the records of the databases relevant to sections 13 and 14 of this contract are true, accurate, and complete.

16. *Submissions are Irrevocable.* The parties hereto expressly acknowledge as the essence hereof that the Offeror voluntarily submits to NMFS this firm and irrevocable offer. The Offeror expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of the Reduction Contract and that the receipt date and time which NMFS marks on the Reduction Contract constitutes the date and time of the offer's submission.

17. *Offer Rejection.* NMFS shall reject an offer that NMFS deems is in any way unresponsive or not in conformance with the Reduction Contract, and the applicable law or regulations unless the Offeror corrects the

defect and NMFS, in its sole discretion, accepts the correction.

18. *Notarized Offeror Signature(s) Required.* NMFS shall deem as non-responsive and reject an offer whose Offer Submission Form does not contain the notarized signatures of all persons required to sign the form on behalf of the Offeror.

19. *Offer Rejections Constitute Final Agency Action.* NMFS's offer rejections are conclusive and constitute final agency action as of the rejection date.

20. *Effect of Offer Submission.* Submitting an irrevocable offer conforming to the requirements stated herein entitles the Offeror to have NMFS accept the offer if NMFS, in its sole discretion, deems that the offer is fully responsive and complies with the Act, the final rule and any other rule promulgated pursuant to the Act.

21. *Offeror Retains Use.* After submitting an offer, the Offeror shall continue to hold, own, or retain unimpaired every aspect of any and all LLP License(s) and or vessels set forth on an Offer included as Reduction Fishing Interests, until such time as: NMFS notifies the Offeror that the Reduction Plan is not in compliance with the Act or other applicable law and will not be approved by NMFS; notifies the Offeror that the referendum was unsuccessful; NMFS tenders the reduction payment and the Offeror complies with its obligations under the Reduction Contract; or NMFS otherwise excuses the Offeror's performance.

22. *Acceptance by Referendum.* NMFS shall formally notify the Offeror in writing whether the referendum is successful, which written notice shall inform Offeror that the condition subsequent has been satisfied. Therefore, Offeror expressly acknowledges that all parties must perform under the Reduction Contract and the Reduction Contract is enforceable against, and binding on, the Reduction Contract parties in accordance with the terms and conditions herein.

23. *Reduction Contract Subject to Federal Law.* The Reduction Contract is subject to Federal law.

24. *Notice to Creditors.* Upon NMFS' offer acceptance notice to the Offeror, Offeror agrees to notify all parties with secured interests in the Reduction Fishing Interests that the Offeror has entered into the Reduction Contract.

25. *Referendum.* Offeror acknowledges that the outcome of the referendum of the Reduction Plan is an occurrence over which NMFS has no control.

26. *Unsuccessful Referendum Excuses Performance.* An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Offeror need not surrender and relinquish or allow the revocation or restriction of any element of the Reduction Fishing Interest specified in the Reduction Contract. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

27. *Offeror Responsibilities upon Successful Referendum.* Upon NMFS' formal notification to the Offeror that the referendum was successful and that NMFS had accepted the Reduction Contract, Offeror shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests.

28. *Written Payment Instructions.* After a successful referendum, NMFS shall tender reduction payment by requesting the Offeror to provide to NMFS, and the Offeror shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Offeror or to the Offeror's order.

29. *Request for Written Payment Instructions Constitutes Tender.* NMFS' request to the Offeror for written payment instructions constitutes reduction payment tender, as specified in 50 CFR 600.1011.

30. *Offeror Responsibilities upon Tender.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests. The Offeror must then return the original of its Groundfish Reduction Permit and Reduction Permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Offeror shall forever cease all fishing for any species with the Reduction Privilege Vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed from the Reduction Privilege Vessel. Offeror agrees to authorize the United States Coast Guard to cancel the fishery endorsement in the Reduction Privilege Vessel.

31. *Reduction Privilege Vessel Lacking Federal Documentation.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately scrap any vessel which the Offeror specified as a Reduction Privilege Vessel and which is documented solely under state law or otherwise lacks documentation under Federal law. The Offeror shall scrap such vessel at the Offeror's expense. The Offeror shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Offeror shall conclude such scrapping within a reasonable time.

32. *Future Harvest Privilege and Reduction Fishing History Extinguished.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part,

from the use or holdership of the Groundfish Reduction Permits and the Reduction Permit(s), from the use or ownership of the Reduction Privilege Vessel (subject to and in accordance with the provisions of section 8 of this contract), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Offeror for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

33. *Post Tender Use of Federally Documented Reduction Privilege Vessel*. After NMFS' reduction payment tender to the Offeror, the Offeror may continue to use a federally documented Reduction Privilege Vessel for any lawful purpose except ''fishing'' as defined under the Magnuson-Stevens Act and may transfer—subject to all restrictions in the Reduction Contract, other applicable regulations, and the applicable law—the vessel to a new owner. The Offeror or any subsequent owner shall only operate the Reduction Privilege Vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Offeror fails to abide by such restrictions, the Offeror expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the Reduction Privilege Vessel and scrapping it at the Offeror's expense.

34. *NMFS' Actions upon Tender*. Contemporaneously with NMFS' reduction payment tender to the Offeror, and without regard to the Offeror's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: Permanently revoke the Offeror's Groundfish Reduction Permit and Reduction Permit(s); notify the National Vessel Documentation Center to permanently revoke the Reduction Privilege Vessel's fishery trade endorsement; notify the U.S. Maritime Administration to make the Reduction Privilege Vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the Reduction Fishing History represented by any documented harvest fishing history accrued on, under, or as a result of the operation of the Reduction Privilege Vessel and/or Reduction Fishing Vessel (subject to and in accordance with the provisions of section 8 of this contract), the Groundfish Reduction Permit, and the Reduction Permit(s) which could ever qualify the Offeror for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

35. *Material Disputes to be Identified*. Members of the public shall, up until NMFS receives the Offeror's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted Reduction Contract. Such a material dispute shall neither relieve the Offeror of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

36. *Reduction Payment Disbursement*. Once NMFS receives the Offeror's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Offeror. Reduction payment disbursement shall be in strict accordance with the Offeror's written payment instructions. Unless the Offeror's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Offeror. If the qualifying Offeror offers with a co-Offeror, both the qualifying Offeror and the co-Offeror must approve and sign the written payment instructions.

37. *Reduction Payment Withheld for Scrapping or for Other Reasons*. In the event that a Reduction Privilege Vessel which is not under Federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped before disbursing any amount withheld. NMFS may confirm, if NMFS so chooses, that the vessel has been scrapped before disbursing any amount withheld. If NMFS has reason to believe the Offeror has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction payment disbursement until such time as the Offeror performs in accordance with the Reduction Contract terms and conditions.

38. *Offeror Assistance with Restriction*. The Offeror shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the Reduction Contract's Reduction Fishing Interest in accordance with the requirements of the Reduction Contract terms and conditions, applicable regulations and the applicable law.

39. *Recordation of Restrictions*. Upon the Reduction Fishing Privilege's revocation, the Offeror shall do everything reasonably necessary to ensure that such revocation is recorded on the Reduction Privilege Vessel's Federal documentation (which the National Vessel Documentation Center maintains in accordance with Federal maritime law and

regulations) in such manner as is acceptable to NMFS and as shall prevent the Reduction Privilege Vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term ''fishing'' includes the full range of activities defined in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

40. *Reduction Element Omission*. In the event NMFS accepts the offer and the Offeror has failed, for any reason, to specify in the Reduction Contract any Groundfish Reduction Permit, non-Groundfish Reduction Permit(s), Reduction Privilege Vessel, Reduction Fishing Vessel, Reduction Fishing History, or any other element of the Reduction Fishing Interest which the Offeror should under Reduction Contract, applicable regulations and the applicable law have specified in Reduction Contract, such omitted element shall nevertheless be deemed to be included in the Reduction Contract and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not be omitted shall apply as if such element had not been omitted. Upon the Offeror discovering any such omission, the Offeror shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Offeror discovering any such omission, the Offeror shall act in accordance with the Reduction Contract, applicable regulations and the applicable law.

41. *Remedy for Breach*. Because money damages are not a sufficient remedy for the Offeror breaching any one or more of the Reduction Contract terms and conditions, the Offeror explicitly agrees to and hereby authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Reduction Contract, applicable regulations and the applicable law.

42. *Waiver of Data Confidentiality*. The Offeror consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Reduction Plan requirements, including any information provided in the Reduction Contract or by any other means associated with, or necessary for evaluation of, the Offeror's Reduction Contract if NMFS finds that the release of such information is necessary to achieve the Reduction Plan's authorized purpose. The Offeror hereby explicitly waives any claim of confidentiality otherwise afforded to catch, or harvest data and fishing histories otherwise protected from release under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881 a(b)) or any other law. In the event of such information release, the Offeror hereby forever fully and unconditionally releases and holds harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act or event arising from, out of, or in any way related to, the release of any information associated with the Reduction Program.

43. *Oral Agreement Invalid*. The Reduction Contract, any addendums to section 46 of this contract, and enclosures of photocopies of licenses and permits required under section 46 of this contract, contain the final terms and conditions of the agreement between the Offeror and NMFS and represent the entire and exclusive agreement between them. NMFS and the Offeror forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

44. *Severable Provisions*. The Reduction Contract provisions are severable; and, in the event that any portion of the Reduction Contract is held to be void, invalid, non-binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against the Offeror and NMFS.

45. *Disputes*. Any and all disputes involving the Reduction Contract, and any other Reduction Plan aspect affecting them shall in all respects be governed by the Federal laws of the United States; and the Offeror and all other parties claiming under the Offeror irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

46. *Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification*.

a. *Completion and Submission*. The Offeror must fully, faithfully, and accurately complete this section 46 of this contract and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Reduction Contract. If completing this section requires inserting more information than the places provided for the insertion of such information allows, the Offeror should attach an addendum to the Reduction Contract that: Includes and identifies the additional information, states that the addendum is a part of the Reduction Fishing Interests Identification portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Reduction Contract's Groundfish Reduction Permit, and is signed by all persons who signed the Reduction Contract as the Offeror.

b. *Offeror Information.*

(1) *Offeror name(s).* Insert in the table provided under this section 46.b(1) of this contract the name(s) of the qualifying Offeror and of the co-Offeror (if there is a co-Offeror), and check the appropriate box for each name listed.

Each name the Offeror inserts must be the full and exact legal name of record of each person, partnership, corporation or other business entity identified on the offer. If any Reduction Fishing Interest element is co-owned by more than one person, partnership, corporation or other business entity, the Offeror must insert each co-owner's name.

In each case, the Offeror is the holder of record, at the time of Offeror's execution of this Reduction Contract, of the Groundfish Reduction Permit and the Reduction Permit(s). A co-Offeror is not allowed for either the Groundfish Reduction Permit or the Reduction Permit(s). If the Offeror is also the owner of record, at the time of offering, of the Reduction Privilege Vessel, the qualifying Offeror is the sole Offeror. If, however, the owner of record, at the time of execution of this Reduction Contract, of the Reduction Privilege Vessel is not exactly the same as the Offeror, then the owner of record is the co-Offeror; and the Offeror and the co-Offeror jointly offer together as the Offeror.

OFFEROR NAME(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column to name each co-Offeror. If not, use only one row for Offeror and one row for any co-Offeror	Check appropriate box for each name listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(2) *Offeror address(s) of record.* Insert in the table provided under this section 46.b(2) of this contract the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact address(s) of record, and check the appropriate box for each address listed.

OFFEROR ADDRESS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.	Check appropriate box for each address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(3) *Offeror business telephone number(s).* Insert in the table provided under this section 46.b(3) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact business telephone number(s), and check the appropriate box for each number listed.

OFFEROR BUSINESS TELEPHONE NUMBER(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the telephone number of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.	Check appropriate box for each telephone number listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		

OFFEROR BUSINESS TELEPHONE NUMBER(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the telephone number of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.	Check appropriate box for each telephone number listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(2)		
(3)		
(4)		
(5)		

(4) *Offeror electronic mail address(s) (if available)*. Insert in the table printed under this section 46.b(4) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact electronic mail (e-mail) address(s), and check the appropriate box for each address.

OFFEROR E-MAIL ADDRESS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the e-mail address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name in section 46.b(1) of this contract, i.e., e-mail (1) is for name (1), e-mail (2) is for name (2), e-mail (3) is for name (3), etc	Check appropriate box for each e-mail address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

c. *LLP license number for Groundfish Reduction Permit*. Insert in the place this section 46.c provides the full and exact license number which NMFS designated on the LLP license which the Offeror specifies as the Groundfish Reduction Permit. Attach with the Reduction Contract an exact photocopy of such license.

LLP LICENSE NUMBER(S) AND FISHERY(S) OF Of LLP LICENSE(S) SPECIFIED AS GROUNDFISH REDUCTION PERMIT(S)	
License number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

d. *License number(s) for Reduction Permit(s)*. Insert in the place this section 46.d provides the fishery(s) involved in, and the full and exact license number(s) with NMFS designated on the license(s) which the Offeror specifies in the Reduction Contract as the Reduction Permit(s). Enclose with the Reduction Contract an exact photocopy of each such license.

LLP LICENSE NUMBER(S) AND FISHERY OF LICENSE(S) SPECIFIED AS REDUCTION PERMITS	
License number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

e. *Reduction Fishing History*. For all Reduction Fishing History insert in the place provided in the table under this section 46.e the chronological and other information with each column heading therein requires. The information required does not include any actual landing data. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS based on the fishing history of a lost or destroyed vessel plus a replacement vessel

must insert information for both vessels and meet the requirements of the framework regulations, final rule and any other regulations promulgated pursuant to the Act. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS in any part based on acquisition of fishing history from another party must insert information regarding such catch history.

NAMES(S) AND OFFICIAL NUMBER OF REDUCTION PRIVILEGE VESSEL AND NAME(S) AND OFFICIAL NUMBER(S) OF ANY VESSEL FROM WHICH FISHING HISTORY WAS ACQUIRED	FOR EACH REDUCTION PRIVILEGE VESSEL IN 1ST COLUMN PROVIDE FROM TO DATE OF EACH FISHING HISTORY OFFEROR POSSESSES	FOR EACH FISHING HISTORY IN 2ND COLUMN	
		License No. of each Groundfish Reduction Permit and Reduction Permit(s) associated with each vessel involved	If Reduction Privilege Vessel acquired fishing history from another party, provide name of party, manner in which acquired, and date acquired
(1)			
(2)			
(3)			
(4)			
(5)			

f. *Reduction Privilege Vessel*. Insert the full and exact name and official number which the National Vessel Documentation Center designated for the Reduction Privilege Vessel which the Offeror or the co-Offeror (if there is a co-Offeror) specifies in the Reduction Contract, and check the box appropriate for the vessel's ownership of record.

Enclose with the Reduction Contract an exact photocopy of such vessel's official certificate of documentation.

REDUCTION PRIVILEGE VESSEL		Check appropriate ownership box below	
Official name	Official No.	Offeror	Co-Offeror (if any)

g. *Offer Amount*. Insert in the place this section 46.g provides the Offeror's full and exact offer amount, both in words and in numbers.

OFFER AMOUNT [U.S. DOLLARS]	
In words	In numbers

h. *Reduction Contract Signature*. In compliance with the Reduction Contract, applicable regulations and the applicable law, the Offeror submits the Reduction Contract as the Offeror's irrevocable offer to NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Fishing Privilege, and the Reduction Fishing History—all as identified in the Reduction Contract or as required under applicable regulations, or the applicable law.

The Offeror expressly acknowledges that NMFS' acceptance of the Offeror's offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same amount specified in section 46.g of this contract (less any sum withheld for scrapping any Reduction Privilege Vessel lacking Federal documentation or for any other purpose) to the Offeror shall, among other things, render the Reduction Privilege Vessel permanently ineligible or any fishing worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments, limitations, obligations, or other provisions which restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete Reduction Fishing Interest and any other fishery privileges or claims associated with the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Privilege Vessel, and the Reduction Fishing History—all as more fully set forth in the Reduction Contract, applicable regulations, and the applicable law.

By completing and signing the Reduction Contract, the Offeror expressly acknowledges that the Offeror has fully and completely

read the entire Reduction Contract. The Offeror expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Offeror is fully able to enter into the Reduction Contract and that the Offeror legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full Reduction Fishing Interest which the Reduction Contract specifies and the applicable regulations, and the applicable law requires that any person or entity completing the Reduction Contract and/or signing the Reduction Contract on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or other grant of authority to bind such other person or entity to the Reduction Contract's terms and conditions. The Offeror expressly attests, warrants, and represents to NMFS that every co-owner of the Offeror necessary to constitute the Offeror's full and complete execution of the Reduction Contract has signed the Reduction Contract. The Offeror expressly attests, warrants, and represents to NMFS that the Offeror: Fully understands the consequences of submitting the completed Reduction Contract of which it is a party to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Offeror's breach of the Reduction Contract or submission of an offer which fails to conform with the Reduction Contract, final rule, applicable regulations and the applicable law. The Offeror expressly attests, warrants, and represents to NMFS that all information which the Offeror inserted in the Reduction Contract is true, accurate, complete, and fully in accordance with the Reduction Contract, final rule, other applicable regulations and the applicable law.

In witness whereof, the Offeror has, in the place provided below, executed the Reduction Contract either as an Offeror offering alone or as an Offeror and co-Offeror (if there is a co-Offeror) jointly offering together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Offeror's offer by signing the Reduction Contract.

The Offeror and co-Offeror (if there is a co-Offeror) must each sign the Reduction Contract exactly as instructed herein. Each co-owner (if there is a co-owner) of each Offeror and co-Offeror (if there is a co-Offeror) must also sign the Reduction Contract exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Offeror, complete and sign the acknowledgment and certification provision associated with each such person or entity's signature.

I. *Offeror and co-Offeror's (if there is a co-Offeror) signature(s) and notary's acknowledgment(s) and certification(s).*

OFFEROR'S SIGNATURE AND NOTARY'S ACKNOWLEDGMENT AND CERTIFICATION If Offeror or co-Offeror consists of more than one owner, use one row of column 1 for each co-owner's signature. If not, use only one row for Offeror and one row for co-Offeror (if any). Always use same Offeror row order as in Offeror Name in the table under section 46.b(1) of this contract (i.e., signature (1) is for name (1), signature (2) is for name (2) signature (3) is for name (3), etc.)			
OFFEROR SIGNATURE (1) Sign. (2) Print: the following: (a) signer's name, (b) signer's title (if signing for corporation or other business entity), and (c) signing date	Check appropriate column for each signature in 1st column		*NOTARY SIGNATURE* (1) Sign. (2) Print: the following: (a) name, (b) signing date, (3) date commission expires, and (4) State and county. Each notary signature attests to the following: "I certify that I know or have satisfactory evidence that the person who signed in the 1st column of this same row is the person who appeared before me and: (1) acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged that he/she did so freely and voluntarily."
	Qualifying Offeror	Co-Offeror (if any)	
(1)			
(2)			
(3)			

II. *United States of America's signature.* United States of America, Acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division.

Dated: _____
By: _____
Leo C. Erwin, Chief,
Financial Services Division, National Marine Fisheries Service.

[71 FR 57701, Sept. 29, 2006]

§ 600.1106 Longline catcher processor subsector Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish species fee payment and collection system.

(a) *Purpose.* As authorized by Public Law 108 447, this section's purpose is to:

(1) In accordance with § 600.1012, establish:

(i) The borrower's obligation to repay a reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with §§ 600.1013 through 600.1016, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 and § 600.1105 expressly apply to this section. In addition, the following definition applies to this section:

Reduction fishery means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery that § 679.2 of this chapter defined as groundfish area/species endorsements.

(c) *Reduction loan amount.* The reduction loan's original principal amount is $35,000,000.

(d) *Interest accrual from inception.* Interest began accruing on the reduction loan from May 29, 2007, the date on which NMFS disbursed such loan.

(e) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2007 plus 2 percent.

(f) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from May 29, 2007, but fees shall continue indefinitely for as long as necessary to fully repay the loan.

(g) *Reduction loan repayment.* (1) The borrower shall, in accordance with § 600.1012, repay the reduction loan;

(2) For the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, subsector members are deemed to be both the fish buyer and fish seller. In this case, all requirements and penalties of § 600.1013 that are applicable to both a fish seller and a fish buyer shall equally apply to parties performing both functions;

(3) Subsector members in the reduction fishery shall pay and collect the fee amount in accordance with § 600.1105;

(4) Subsector members in the reduction fishery shall, in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by February 1 of each calendar year; and

(5) The reduction loan is, in all other respects, subject to the provisions of §§ 600.1012 through 600.1017.

[72 FR 54222, Sept. 24, 2007]

Subpart N—Shark Finning

SOURCE: 67 FR 6200, Feb. 11, 2002, unless otherwise noted. Redesignated at 69 FR 53361, Sept. 1, 2004.

§ 600.1200 Purpose and scope.

The regulations in this subpart govern ''shark finning'' (the removal of shark fins and discarding of the carcass), the possession of shark fins, and the landing into U.S. ports of shark fins without corresponding carcasses under the authority of the Magnuson-Stevens Act. They implement the Shark Finning Prohibition Act of 2000.

§ 600.1201 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in §§ 600.514 and 600.705 and in paragraphs (b) and (c) of this section.

(b) Regulations pertaining to shark conservation and management for certain shark fisheries are also set forth in this subpart and in parts 635 (for

Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), and 660 (for fisheries off West Coast states and in the western Pacific) of this chapter governing those fisheries.

(c) Nothing in this regulation supercedes more restrictive state laws or regulations regarding shark finning in state waters.

(d) A person who owns or operates a vessel that has been issued an Atlantic Federal commercial shark limited access permit or a spiny dogfish permit is subject to the reporting and recordkeeping requirements found at parts 635 and 648 of this chapter, respectively.

§ 600.1202 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

Land or *landing* means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shoreside location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

Shark finning means taking a shark, removing a fin or fins (whether or not including the tail), and returning the remainder of the shark to the sea.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

§ 600.1203 Prohibitions.

(a) In addition to the prohibitions in §§ 600.505 and 600.725, it is unlawful for any person to do, or attempt to do, any of the following:

(1) Engage in shark finning, as provided in § 600.1204(a) and (i).

(2) Possess shark fins without the corresponding carcasses while on board a U.S. fishing vessel, as provided in § 600.1204(b) and (j).

(3) Land shark fins without the corresponding carcasses, as provided in § 600.1204(c) and (k).

(4) Fail to have all shark fins and carcasses from a U.S. or foreign fishing vessel landed at one time and weighed at the time of the landing, as provided in § 600.1204(d).

(5) Possess, purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section, as provided in § 600.1204(e) and (l).

(6) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to and/or inspection or copying of any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses, as provided in § 600.1204(f).

(7) Fail to have shark fins and carcasses recorded as specified in § 635.30(c)(3) of this chapter.

(8) Fail to have all shark carcasses and fins landed and weighed at the same time if landed in an Atlantic coastal port, and to have all weights recorded on the weighout slips specified in § 635.5(a)(2) of this chapter.

(9) Fail to maintain a shark in the form specified in §§ 600.1204(h) and 635.30(c) of this chapter.

(b)(1) For purposes of this section, it is a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of this section if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

(2) For purposes of this section, it is a rebuttable presumption that shark fins possessed by a U.S. fishing vessel were taken and held in violation of this section if the total weight of the shark fins on board, or landed, exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

[67 FR 6200, Feb. 11, 2002. Redesignated at 69 FR 53361, Sept. 1, 2004, as amended at 73 FR 40707, July 15, 2008]

§ 600.1204 Shark finning; possession at sea and landing of shark fins.

(a)(1) No person aboard a U.S. fishing vessel shall engage in shark finning in waters seaward of the inner boundary of the U.S. EEZ.

(2) No person aboard a foreign fishing vessel shall engage in shark finning in waters shoreward of the outer boundary of the U.S. EEZ.

(b) No person aboard a U.S. fishing vessel shall possess on board shark fins harvested seaward of the inner boundary of the U.S. EEZ without the corresponding carcass(es), as may be determined by the weight of the shark fins in accordance with § 600.1203(b)(2), except that sharks may be dressed at sea.

(c) No person aboard a U.S. or foreign fishing vessel (including any cargo vessel that received shark fins from a fishing vessel at sea) shall land shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ without corresponding shark carcasses, as may be determined by the weight of the shark fins in accordance with § 600.1203(b)(1).

(d) Except as provided in paragraphs (g) and (h) of this section, a person who operates a U.S. or foreign fishing vessel and who lands shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ shall land all fins and corresponding carcasses from the vessel at the same point of landing and shall have all fins and carcasses weighed at that time.

(e) A person may not purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section.

(f) Upon request, a person who owns or operates a vessel or a dealer shall allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to, and/or inspection or copying of, any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses.

(g) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the ''weighout slips'' specified in § 635.5(a)(2) of this chapter.

(h) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c) of this chapter.

(i) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall engage in shark finning.

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall possess on board shark fins without the fins being naturally attached to the corresponding carcass(es), although sharks may be dressed at sea.

(k) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall land shark fins without the corresponding carcass(es).

(l) A dealer may not purchase from an owner or operator of a fishing vessel issued a Federal Atlantic commercial shark limited access permit who lands shark in an Atlantic coastal port fins whose wet weight exceeds 5 percent of the dressed weight of the carcasses.

[67 FR 6200, Feb. 11, 2002. Redesignated at 69 FR 53361, Sept. 1, 2004, as amended at 73 FR 40707, July 15, 2008]

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

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APPENDIX B TO PART 622—GULF AREAS
APPENDIX C TO PART 622—FISH LENGTH MEASUREMENTS
APPENDIX D TO PART 622—SPECIFICATIONS FOR CERTIFIED BRDS

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

SOURCE: 61 FR 34934, July 3, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 622 appear at 70 FR 73389, Dec. 12, 2005 and 73 FR 411, Jan. 3, 2008.

Subpart A—General Provisions

§ 622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson-Stevens Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, South Atlantic, or Atlantic EEZ, unless otherwise specified, as indicated in Table 1 of this section. For the FMPs noted in the following table, conservation and management extends to adjoining state waters for the purposes of data collection and monitoring.

TABLE 1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
Atlantic Coast Red Drum FMP	SAFMC	Mid-Atlantic and South Atlantic.
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf,[1] Mid-Atlantic [1,2] and South Atlantic. [1,3]
FMP for Coral and Coral Reefs of the Gulf of Mexico	GMFMC	Gulf.
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Dolphin and Wahoo Fishery off the Atlantic States	SAFMC	Atlantic.
FMP for the Golden Crab Fishery of the South Atlantic Region	SAFMC	South Atlantic
FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for Pelagic Sargassum Habitat of the South Atlantic Region	SAFMC	South Atlantic
FMP for the Red Drum Fishery of the Gulf of Mexico	GMFMC	Gulf. [1]
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf.[5]
FMP for the Shrimp Fishery of the Gulf of Mexico	GMFMC	Gulf. [1]
FMP for the Shrimp Fishery of the South Atlantic Region	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region	SAFMC	South Atlantic. [1,4]
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
[2] Only king and Spanish mackerel and cobia are managed under the FMP in the Mid-Atlantic.
[3] Bluefish are not managed under the FMP in the South Atlantic.
[4] Bank, rock, and black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.19′ N. lat., the latitude of Cape Hatteras Light, NC.
[5] Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement or possessed by a dealer with a Gulf red snapper IFQ dealer endorsement.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 65483, Dec. 13, 1996; 63 FR 10565, Mar. 4, 1998; 67 FR 22362, May 3, 2002; 68 FR 57378, Oct. 3, 2003; 69 FR 30240, May 27, 2004; 71 FR 67457, Nov. 22, 2006]

§ 622.2 Definitions and acronyms.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, and the acronyms in § 600.15 of this chapter, the terms and acronyms used in this part have the following meanings:

Accountability measure means a management control implemented such that overfishing is prevented, where possible, and mitigated if it occurs.

Actual ex-vessel value means the total monetary sale amount a fisherman receives for IFQ landings from a registered IFQ dealer.

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish (e.g., quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

NOTE: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.

Annual catch limit (ACL) means the level of catch that serves as the basis for invoking accountability measures.

Aquacultured live rock means live rock that is harvested under a Federal aquacultured live rock permit, as required under § 622.4(a)(3)(iii).

Atlantic means the North Atlantic, Mid-Atlantic, and South Atlantic.

Authorized statistical reporting agent means:

(1) Any person so designated by the SRD; or

(2) Any person so designated by the head of any Federal or State agency that has entered into an agreement with the Assistant Administrator to collect fishery data.

Automatic reel means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel electrically or hydraulically.

Bandit gear means a rod and reel that remain attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

BRD means bycatch reduction device.

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom. A hook or hooks (usually 6 to 10) are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

Carapace length means the straight-line distance from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax. (See Figure 1 in Appendix C of this part.)

Caribbean means the Caribbean Sea around Puerto Rico and the U.S. Virgin Islands.

Caribbean coral reef resource means one or more of the species, or a part thereof, listed in Table 1 in Appendix A of this part, whether living or dead.

Caribbean prohibited coral means, in the Caribbean; a gorgonian, that is, a Caribbean coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea; a live rock; or a stony coral, that is, a Caribbean coral reef resource of the Class Hydrozoa (fire corals and hydrocorals) or of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals); or a part thereof.

Caribbean queen conch or *queen conch* means the species, *Strombus gigus*, or a part thereof.

Caribbean reef fish means one or more of the species, or a part thereof, listed in Table 2 in Appendix A of this part.

Caribbean spiny lobster means the species *Panulirus argus*, or a part thereof.

CFMC means the Caribbean Fishery Management Council.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers

for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew. However, a charter vessel that has a charter vessel permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid Certificate of Inspection (COI) issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel provided—

(1) It is not carrying a passenger who pays a fee; and

(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Circle hook means a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

Coastal migratory pelagic fish means one or more of the following species, or a part thereof:

(1) Bluefish, *Pomatomus saltatrix* (Gulf of Mexico only).

(2) Cero, *Scomberomorus regalis*.

(3) Cobia, *Rachycentron canadum*.

(4) Dolphin, *Coryphaena hippurus* (Gulf of Mexico only).

(5) King mackerel, *Scomberomorus cavalla*.

(6) Little tunny, *Euthynnus alletteratus*.

(7) Spanish mackerel, *Scomberomorus maculatus*.

Coral area means marine habitat in the Gulf or South Atlantic EEZ where coral growth abounds, including patch reefs, outer bank reefs, deep water banks, and hard bottoms.

Dealer, in addition to the definition specified in § 600.10 of this chapter, means the person who first receives rock shrimp harvested from the EEZ or dolphin or wahoo harvested from the Atlantic EEZ upon transfer ashore.

Dehooking device means a device intended to remove a hook embedded in a fish to release the fish with minimum damage.

Dolphin means the species *Coryphaena equiselis* or *C. hippurus*, or a part thereof, in the Atlantic. (See the definition of *Coastal migratory pelagic fish* for dolphin in the Gulf of Mexico.)

Drift gillnet, for the purposes of this part, means a gillnet, other than a long gillnet or a run-around gillnet, that is unattached to the ocean bottom, regardless of whether attached to a vessel.

Fish trap means—

(1) In the Caribbean EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish.

(2) In the Gulf EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish, except a trap historically used in the directed fishery for crustaceans (that is, blue crab, stone crab, and spiny lobster).

(3) In the South Atlantic EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking fish, except a sea bass pot, a golden crab trap, or a crustacean trap (that is, a type of trap historically used in the directed fishery for blue crab, stone crab, red crab, jonah crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, red crab, jonah crab, and spiny lobster).

Fork length means the straight-line distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 2 in Appendix C of this part.)

Golden crab means the species *Chaceon fenneri*, or a part thereof.

Golden crab trap means any trap used or possessed in association with a directed fishery for golden crab in the South Atlantic EEZ, including any trap that contains a golden crab in or

from the South Atlantic EEZ or any trap on board a vessel that possesses golden crab in or from the South Atlantic EEZ.

GMFMC means the Gulf of Mexico Fishery Management Council.

Gulf means the Gulf of Mexico. The line of demarcation between the Atlantic Ocean and the Gulf of Mexico is specified in § 600.105(c) of this chapter.

Gulf reef fish means one or more of the species, or a part thereof, listed in Table 3 in Appendix A of this part.

Gulf and South Atlantic prohibited coral means, in the Gulf and South Atlantic, one or more of the following, or a part thereof:

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals).

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

(3) A seafan, *Gorgonia flabellum* or *G. ventalina*.

(4) Coral in a coral reef, except for allowable octocoral.

(5) Coral in an HAPC, including allowable octocoral.

Handline means a line with attached hook(s) that is tended directly by hand.

HAPC means habitat area of particular concern.

Headboat means a vessel that holds a valid Certificate of Inspection (COI) issued by the USCG to carry more than six passengers for hire.

(1) A headboat with a commercial vessel permit, as required under § 622.4(a)(2), is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(i) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's COI; or

(ii) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish, when there are more than three persons aboard, including operator and crew.

(2) However a vessel that has a headboat permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid COI issued by the USCG to carry passengers for hire will not be considered to be operating as a headboat provided—

(i) It is not carrying a passenger who pays a fee; and

(ii) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the mouth of the net are attached to sleds, doors, or other devices that spread the net.

Hook-and-line gear means automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel.

IFQ means individual fishing quota.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Long gillnet means a gillnet that has a float line that is more than 1,000 yd (914 m) in length.

Longline means a line that is deployed horizontally to which gangions and hooks are attached. A longline may be a bottom longline, i.e., designed for use on the bottom, or a pelagic longline, i.e., designed for use off the bottom. The longline hauler may be manually, electrically, or hydraulically operated.

MAFMC means the Mid-Atlantic Fishery Management Council.

Mid-Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter, to the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter.

Migratory group, for king and Spanish mackerel, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King

and Spanish mackerel are divided into migratory groups—the Atlantic migratory group and the Gulf migratory group. The boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation*. From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation*. From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25′ N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ.

(2) *Spanish mackerel*. The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

North Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the United States and Canada to the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter.

Off Florida means the waters in the Gulf and South Atlantic from 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary, to 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Off Georgia means the waters in the South Atlantic from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary.

Official sunrise or *official sunset* means the time of sunrise or sunset as determined for the date and location in *The Nautical Almanac*, prepared by the U.S. Naval Observatory.

Off Louisiana, Mississippi, and Alabama means the waters in the Gulf other than off Florida and off Texas.

Off North Carolina means the waters in the South Atlantic from 36°34′55″ N. lat., which is a line directly east from the Virginia/North Carolina boundary, to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters in the South Atlantic from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off Texas means the waters in the Gulf west of a rhumb line from 29°32.1′ N. lat., 93°47.7′ W. long. to 26°11.4′ N. lat., 92°53′ W. long., which line is an extension of the boundary between Louisiana and Texas.

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

Pelagic sargassum means the species *Sargassum natans* or *S. fluitans*, or a part thereof.

Penaeid shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus*.

(2) Pink shrimp, *Farfantepenaeus duorarum*.

(3) White shrimp, *Litopenaeus setiferus*.

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of penaeid shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, that fires a projectile upon contact.

Processor means a person who processes fish or fish products, or parts thereof, for commercial use or consumption.

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

Red drum, also called redfish, means *Sciaenops ocellatus,* or a part thereof.

Red snapper means *Lutjanus campechanus,* or a part thereof, one of the Gulf reef fish species.

Regional Administrator (RA), for the purposes of this part, means the Administrator, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or a designee.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

Run-around gillnet means a gillnet, other than a long gillnet, that, when used, encloses an area of water.

SAFMC means the South Atlantic Fishery Management Council.

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

Science and Research Director (SRD), for the purposes of this part, means the Science and Research Director, Southeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter).

Sea bass pot means a trap has six rectangular sides and does not exceed 25 inches (63.5 cm) in height, width, or depth.

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus.*

(2) White shrimp, *Litopenaeus setiferus.*

(3) Pink shrimp, *Farfantepenaeus duorarum.*

(4) Royal red shrimp, *Hymenopenaeus robustus.*

(5) Rock shrimp, *Sicyonia brevirostris.*

(6) Seabob shrimp, *Xiphopenaeus kroyeri.*

Shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

SMZ means special management zone.

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter, to the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

South Atlantic snapper-grouper means one or more of the species, or a part thereof, listed in Table 4 in Appendix A of this part.

Stab net means a gillnet, other than a long gillnet, or trammel net whose weight line sinks to the bottom and submerges the float line.

Total length (TL), for the purposes of this part, means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side. The mouth of the fish may be closed and/or the tail may be squeezed together to give the greatest overall measurement. (See Figure 2 in Appendix C of this part.)

Toxic chemical means any substance, other than an allowable chemical, that, when introduced into the water, can stun, immobilize, or take marine life.

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

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses).

Venting device means a device intended to deflate the swim bladder of a fish to release the fish with minimum damage.

Wahoo means the species *Acanthocybium solandri,* or a part thereof, in the Atlantic.

Wild live rock means live rock other than aquacultured live rock.

Wreckfish means the species *Polyprion americanus,* or a part thereof, one of the

South Atlantic snapper-grouper species.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996; 61 FR 65483, Dec. 13, 1996; 62 FR 18539, Apr. 16, 1997; 63 FR 10565, Mar. 4, 1998; 63 FR 18144, Apr. 14, 1998; 64 FR 59125, Nov. 2, 1999; 65 FR 52957, Aug. 31, 2000; 67 FR 51078, Aug. 7, 2002; 68 FR 57378, Oct. 3, 2003; 69 FR 30240, May 27, 2004; 70 FR 62080, Oct. 28, 2005; 70 FR 73387, Dec. 12, 2005; 71 FR 45433, Aug. 9, 2006; 71 FR 67458, Nov. 22, 2006; 73 FR 409, Jan. 3, 2008; 73 FR 5127, Jan. 29, 2008; 73 FR 38143, July 3, 2008]

§ 622.3 Relation to other laws and regulations.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such sanctuaries or parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following National Marine Sanctuaries and National Parks:

(1) Florida Keys National Marine Sanctuary (15 CFR part 922, subpart P).

(2) Gray's Reef National Marine Sanctuary (15 CFR part 922, subpart I).

(3) Monitor National Marine Sanctuary (15 CFR part 922, subpart F).

(4) Everglades National Park (36 CFR 7.45).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Fort Jefferson National Monument (36 CFR 7.27).

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the Gulf or South Atlantic EEZ must comply with the more restrictive state regulation.

(d) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and 600.740 of this chapter, respectively.

(e) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter.

[61 FR 34934, July 3, 1996, as amended at 71 FR 28284, May 16, 2006]

§ 622.4 Permits and fees.

(a) *Permits required*. To conduct activities in fisheries governed in this part, valid permits, licenses, and endorsements are required as follows:

(1) *Charter vessel/headboat permits*. (i) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess, in or from the EEZ, species in any of the following species groups, a valid charter vessel/headboat permit for that species group must have been issued to the vessel and must be on board—

(A) Gulf coastal migratory pelagic fish.

(B) South Atlantic coastal migratory pelagic fish.

(C) Gulf reef fish.

(D) South Atlantic snapper-grouper.

(E) Atlantic dolphin and wahoo. (See paragraph (a)(5) of this section for the requirements for operator permits in the dolphin and wahoo fishery.)

(ii) See paragraph (r) of this section regarding a limited access system for charter vessel/headboat permits for Gulf reef fish and Gulf coastal migratory pelagic fish.

(iii) A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of ''Charter vessel'' and ''Headboat'' in § 622.2 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

(2) *Commercial vessel permits, licenses, and endorsements*—(i) [Reserved]

(ii) *Gillnets for king mackerel in the southern Florida west coast subzone*. For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone

(see § 622.42(c)(1)(i)(A)(*3*)), a commercial vessel permit for king mackerel and a king mackerel gillnet permit must have been issued to the vessel and must be on board. See paragraph (o) of this section regarding a limited access system applicable to king mackerel gillnet permits and restrictions on transferability of king mackerel gillnet permits.

(iii) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the three calendar years preceding the application. See paragraph (q) of this section regarding a limited access system applicable to commercial vessel permits for king mackerel, transfers of permits under the limited access system, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

(vi) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kg) of tilefish on board is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb (90.7 kg) of tilefish on board harvested such tilefish in the EEZ. See § 622.18 for limitations on the use, transfer, and renewal of a commercial vessel permit for South Atlantic snapper-grouper.

(vii) *Wreckfish.* For a person aboard a vessel to fish for wreckfish in the South Atlantic EEZ, possess wreckfish in or from the South Atlantic EEZ, offload wreckfish from the South Atlantic EEZ, or sell wreckfish in or from the South Atlantic EEZ, a commercial vessel permit for wreckfish must have been issued to the vessel and must be on board. To obtain a commercial vessel permit for wreckfish, the applicant must be a wreckfish shareholder; and either the shareholder must be the vessel owner or the owner or operator

must be an employee, contractor, or agent of the shareholder. (See § 622.15 for information on wreckfish shareholders.)

(viii) *South Atlantic rock shrimp.* (A) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board. (See paragraph (a)(5) of this section for the requirements for operator permits for the South Atlantic rock shrimp fishery.)

(B) In addition, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board. See § 622.19 for limitations on the issuance, transfer, renewal, and reissuance of a limited access endorsement for South Atlantic rock shrimp.

(ix) *Gulf red snapper IFQ vessel endorsement.* For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper, regardless of where harvested or possessed, a Gulf red snapper IFQ vessel endorsement must have been issued to the vessel and must be on board. As a condition of the IFQ vessel endorsement issued under this paragraph (a)(2)(ix), a person aboard such vessel must comply with the requirements of § 622.16 regardless of where red snapper are harvested or possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish can download an IFQ vessel endorsement from the NMFS IFQ website at *ifq.sero.nmfs.noaa.gov*. If such owner does not have an IFQ online account, the owner must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The vessel endorsement remains valid as long as the vessel permit remains valid and the vessel owner is in compliance with all Gulf reef fish and Gulf red snapper IFQ reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to sanctions under 15 CFR part 904. The endorsement is not transferable. The provisions of this paragraph do not apply to fishing for or possession of Gulf red snapper under the bag limit specified in § 622.39(b)(1)(iii). See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system.

(x) *South Atlantic golden crab.* For a person aboard a vessel to fish for golden crab in the South Atlantic EEZ, possess golden crab in or from the South Atlantic EEZ, off-load golden crab from the South Atlantic EEZ, or sell golden crab in or from the South Atlantic EEZ, a commercial vessel permit for golden crab must be issued to the vessel and must be on board. It is a rebuttable presumption that a golden crab on board a vessel in the South Atlantic or off-loaded from a vessel in a port adjoining the South Atlantic was harvested from the South Atlantic EEZ. See § 622.17 for limitations on the use, transfer, and renewal of a commercial vessel permit for golden crab.

(xi) *Gulf shrimp fisheries*—(A) *Gulf shrimp permit.* For a person aboard a vessel to fish for shrimp in the Gulf EEZ or possess shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp must have been issued to the vessel and must be on board. See paragraph (s) of this section regarding a moratorium on commercial vessel permits for Gulf shrimp and the associated provisions. See the following paragraph, (a)(2)(xi)(B) of this section, regarding an additional endorsement requirement related to royal red shrimp.

(B) *Gulf royal red shrimp endorsement.* Effective March 26, 2007, for a person aboard a vessel to fish for royal red shrimp in the Gulf EEZ or possess royal red shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp with a Gulf royal red shrimp endorsement must be issued to the vessel and must be on board.

(xii) *Atlantic dolphin and wahoo.* (A) For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and

wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a)(2)(xii)(B) of this section. (See paragraph (a)(5) of this section for the requirements for operator permits in the Atlantic dolphin and wahoo fishery).

(B) The provisions of paragraph (a)(2)(xii)(A) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in § 622.44(f)(2). (A charter vessel/headboat permit is not a commercial vessel permit.)

(xiii) *South Atlantic penaeid shrimp.* For a person aboard a trawler to fish for penaeid shrimp in the South Atlantic EEZ or possess penaeid shrimp in or from the South Atlantic EEZ, a valid commercial vessel permit for South Atlantic penaeid shrimp must have been issued to the vessel and must be on board.

(3) *Coral permits*—(i) *Allowable chemical.* For an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida, a Federal allowable chemical permit must have been issued to the individual. Such permit must be available when the permitted activity is being conducted and when such fish or other marine organisms are possessed, through landing ashore.

(ii) *Allowable octocoral.* For an individual to take or possess allowable octocoral in the Gulf or South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

(iii) *Aquacultured live rock.* For a person to take or possess aquacultured live rock in the Gulf or South Atlantic EEZ, a Federal aquacultured live rock permit must have been issued for the specific harvest site. Such permit, or a copy, must be on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site.

(iv) *Prohibited coral.* A Federal permit may be issued to take or possess Gulf and South Atlantic prohibited coral or Caribbean prohibited coral only as scientific research activity, exempted fishing, or exempted educational activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(v) *Florida permits.* Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(A) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(B) Landing allowable octocoral in Florida.

(C) Landing live rock in Florida.

(4) *Dealer permits, endorsements, and conditions* —(i) *Permits.* For a dealer to receive Gulf reef fish harvested from the Gulf EEZ; golden crab, South Atlantic snapper-grouper, rock shrimp, or wreckfish harvested from the South Atlantic EEZ; or dolphin or wahoo harvested from the Atlantic EEZ; a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, wreckfish, or Atlantic dolphin and wahoo, respectively, must be issued to the dealer.

(ii) *Gulf red snapper IFQ dealer endorsement.* In addition to the requirement for a dealer permit for Gulf reef fish as specified in paragraph (a)(4)(i) of this section, for a dealer to receive Gulf red snapper subject to the Gulf red snapper IFQ program, as specified in § 622.16(a)(1), or for a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement to sell such red snapper directly to an entity other than a dealer, such persons must also have a Gulf red snapper IFQ dealer endorsement. A dealer with a Gulf reef fish dealer permit can download a Gulf red snapper IFQ dealer endorsement from the NMFS IFQ website at

ifq.sero.nmfs.noaa.gov. If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf reef fish dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and Gulf red snapper IFQ reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to sanctions under 15 CFR part 904. The endorsement is not transferable. See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system.

(iii) *State license and facility requirements*. To obtain a dealer permit or endorsement, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(5) *Operator permits*. (i) The following persons are required to have operator permits:

(A) An operator of a vessel that has or is required to have a valid permit for South Atlantic rock shrimp issued under this section.

(B) An operator of a vessel that has or is required to have a charter vessel/headboat or commercial permit for Atlantic dolphin and wahoo issued under this section.

(ii) A person required to have an operator permit under paragraph (a)(5)(i) of this section must carry on board such permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(iii) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.

(iv) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.

(b) *Applications for permits*. Application forms for all permits are available from the RA. Completed application forms and all required supporting documents must be submitted to the RA at least 30 days prior to the date on which the applicant desires to have the permit made effective. All vessel permits are mailed to owners, whether the applicant is an owner or an operator.

(1) *Coral permits*. (i) The applicant for a coral permit must be the individual who will be conducting the activity that requires the permit. In the case of a corporation or partnership that will be conducting live rock aquaculture activity, the applicant must be the principal shareholder or a general partner.

(ii) An applicant must provide the following:

(A) Name, address, telephone number, and other identifying information of the applicant.

(B) Name and address of any affiliated company, institution, or organization.

(C) Information concerning vessels, harvesting gear/methods, or fishing areas, as specified on the application form.

(D) Any other information that may be necessary for the issuance or administration of the permit.

(E) If applying for an aquacultured live rock permit, identification of each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, specification of the port of landing of aquacultured live rock, and a site evaluation report prepared pursuant to generally accepted industry standards that—

(*1*) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(*2*) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(*3*) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(*4*) Describes the naturally occurring bottom habitat at the site; and

(*5*) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

(2) *Dealer permits*. (i) The application for a dealer permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner).

(ii) An applicant must provide the following:

(A) A copy of each state wholesaler's license held by the dealer.

(B) Name, address, telephone number, date the business was formed, and other identifying information of the business.

(C) The address of each physical facility at a fixed location where the business receives fish.

(D) Name, address, telephone number, other identifying information, and official capacity in the business of the applicant.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(3) *Vessel permits*. (i) The application for a commercial vessel permit, other than for wreckfish, or for a charter vessel/headboat permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) or operator of the vessel. A commercial vessel permit that is issued based on the earned income qualification of an operator is valid only when that person is the operator of the vessel. The applicant for a commercial vessel permit for wreckfish must be a wreckfish shareholder.

(ii) An applicant must provide the following:

(A) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner and of the applicant, if other than the owner.

(D) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(F) If applying for a commercial vessel permit, documentation, as specified in the instructions accompanying each application form, showing that applicable eligibility requirements of paragraph (a)(2) of this section have been met.

(G) If a sea bass pot will be used, the number, dimensions, and estimated cubic volume of the pots that will be used and the applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(4) *Operator permits*. An applicant for an operator permit must provide the following:

(i) Name, address, telephone number, and other identifying information specified on the application.

(ii) Two recent (no more than 1–yr old), color, passport-size photographs.

(iii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(c) *Change in application information*. The owner or operator of a vessel with a permit, a person with a coral permit, a person with an operator permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees*.Unless specified otherwise, a fee is charged for each application for a permit, license, or endorsement submitted under this section, for each request for transfer or replacement of such permit, license, or endorsement, and for each sea bass pot identification tag required under § 622.6(b)(1)(i)(B). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each

application form. The appropriate fee must accompany each application, request for transfer or replacement, or request for sea bass pot identification tags.

(e) *Initial issuance.* (1) The RA will issue an initial permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or, in the case of a vessel or dealer permit, the vessel or dealership is sold.

(g) *Transfer*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(b) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(b) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section and other applicable sections of this part. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

(2) *Operator permits.* An operator permit is not transferable.

(h) *Renewal*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* Unless specified otherwise, a vessel owner or dealer who has been issued a permit, license, or endorsement under this section must renew such permit, license, or endorsement on an annual basis. The RA will mail a vessel owner or dealer whose permit, license, or endorsement is expiring an application for renewal approximately 2 months prior to the expiration date. A vessel owner or dealer who does not receive a renewal application from the RA by 45 days prior to the expiration date of the permit, license, or endorsement must contact the RA and request a renewal application. The applicant must submit a completed renewal application form and all required supporting documents to the RA prior to the applicable deadline for renewal of the permit, license, or endorsement and at least 30 days prior to the date on which the applicant desires to have the permit made effective. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(i) *If eligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is eligible for automatic renewal, the RA will mail the automatically renewed permit, license, or endorsement approximately 1 month prior to expiration of the old permit, license, or endorsement.

(ii) *If ineligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license,

or endorsement is ineligible for automatic renewal, the notification will specify the reasons and, if applicable, will provide an opportunity for correction of any deficiencies. If the owner or dealer does not correct such deficiencies within 60 days after the date of the RA's notification, the renewal will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iii) *If new application is required.* If the RA's notification indicates that a new application is required, the notification will include a preprinted renewal application. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iv) *If notification is not received.* A vessel owner or dealer must contact the RA if he/she does not receive a notification from the RA regarding status of renewal of a permit, license, or endorsement by 45 days prior to expiration of the current permit.

(2) *Operator permits.* An operator permit required by this section is issued for a period not longer than 3 years. A permit not renewed immediately upon its expiration would expire at the end of the operator's birth month that is between 2 and 3 years after issuance. For renewal, a new application must be submitted in accordance with paragraph (b)(4) of this section.

(i) *Display.* A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the vessel permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer. An operator of a vessel in a fishery in which an operator permit is required must present his/her operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* (1) A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(2) A person whose operator permit is suspended, revoked, or modified may not be aboard any fishing vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. The vessel's owner and operator are responsible for compliance with this measure. A list of operators whose permits are revoked or suspended may be obtained from the RA.

(k) *Alteration.* A permit, license, or endorsement that is altered, erased, or mutilated is invalid.

(l) *Replacement.* A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application. An application for a replacement operator permit must include two new photographs, as specified in paragraph (b)(4)(ii) of this section.

(m) *Limited access system for commercial vessel permits for Gulf reef fish.* (1) No applications for additional commercial vessel permits for Gulf reef fish will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (m)(2) through (5) of this section, and are subject to the requirement for timely renewal in paragraph (m)(6) of this section. An application for renewal or transfer of a commercial vessel permit for Gulf reef fish will not be considered complete until proof of purchase, installation, activation, and operational status of an approved VMS for the vessel receiving the permit has been verified by NMFS VMS personnel.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer the permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for Gulf reef fish for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may transfer the permit to the income qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within 1 year of the expiration date of the permit.

(n) [Reserved]

(o) *Limited access system for king mackerel gillnet permits applicable in the southern Florida west coast subzone.* Except for applications for renewals of king mackerel gillnet permits, no applications for king mackerel gillnet permits will be accepted. Application forms for permit renewal are available from the RA.

(1) An owner of a vessel with a king mackerel gillnet permit issued under this limited access system may transfer that permit upon a change of ownership of a permitted vessel with such permit from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such permit also may be transferred to another vessel owned by the same entity.

(2) A king mackerel gillnet permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within one year after the expiration date of the permit.

(1)–(6) [Reserved]

(q) *Limited access system for commercial vessel permits for king mackerel.* (1) No applications for additional commercial vessel permits for king mackerel will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (q)(2) through (q)(5) of this section, and are subject to the requirement for timely renewal in paragraph (q)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this limited access system to another vessel owned by the same entity.

(3) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under this limited access system may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15

following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

(r) *Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish and Gulf reef fish.* No applications for additional charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (r)(1) of this section, and are subject to the renewal requirements in paragraph (r)(2) of this section.

(1) *Transfer of permits*—(i) *Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred. An application to transfer a permit to an inspected vessel must include a copy of that vessel's current USCG Certificate of Inspection (COI). A vessel without a valid COI will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(ii) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred, and is not otherwise transferable.

(iii) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the owner of the vessel who is transferring the permit and the owner of the vessel that is to receive the transferred permit must complete the transfer information on the reverse side of the permit and return the permit and a completed application for transfer to the RA. See paragraph (g)(1) of this section for additional transfer-related requirements applicable to all permits issued under this section.

(2) *Renewal.* (i) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the

information required in one of the approved fishing data surveys. Surveys include, but are not limited to—

(A) NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(B) NMFS' Southeast Headboat Survey (as required by § 622.5(b)(1);

(C) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(D) A data collection system that replaces one or more of the surveys in paragraph (r)(2)(i)(A),(B), or (C) of this section.

(ii) A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(3) *Requirement to display a vessel decal*. Upon renewal or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for the applicable permitted fishery or fisheries. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

(s) *Moratorium on commercial vessel permits for Gulf shrimp*. The provisions of this paragraph (s) are applicable through October 26, 2016.(1) *Date moratorium permits are required*. Beginning March 26, 2007, the only valid commercial vessel permits for Gulf shrimp are those issued under the moratorium criteria in this paragraph (s).

(2) *Initial eligibility for a moratorium permit*. Initial eligibility for a commercial vessel moratorium permit for Gulf shrimp is limited to a person who

(i) Owns a vessel that was issued a Federal commercial vessel permit for Gulf shrimp on or before December 6, 2003; or

(ii) On or before December 6, 2003, owned a vessel that was issued a Federal commercial vessel permit for Gulf shrimp and, prior to September 26, 2006, owns a vessel with a Federal commercial permit for Gulf shrimp that is equipped for offshore shrimp fishing, is at least 5 net tons (4.54 metric tons), is documented by the Coast Guard, and is the vessel for which the commercial vessel moratorium permit is being applied.

(3) *Application deadline and procedures*. An applicant who desires a commercial vessel moratorium permit for Gulf shrimp must submit an application to the RA postmarked or hand delivered not later than October 26, 2007. After that date, no applications for additional commercial vessel moratorium permits for Gulf shrimp will be accepted. Application forms are available from the RA. Failure to apply in a timely manner will preclude permit issuance even when the applicant otherwise meets the permit eligibility criteria.

(4) *Determination of eligibility*. NMFS' permit records are the sole basis for determining eligibility based on permit history. An applicant who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(5) *Incomplete applications*. If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's notification, the application will be considered abandoned.

(6) *Notification of ineligibility*. If the applicant does not meet the applicable eligibility requirements of paragraph (s)(2) of this section, the RA will notify the applicant, in writing, of such determination and the reasons for it.

(7) *Permit transferability*. Commercial vessel moratorium permits for Gulf shrimp are fully transferable, with or without the sale of the vessel. To request that the RA transfer a commercial vessel moratorium permit for Gulf shrimp, the owner of a vessel that is to receive the transferred permit must complete the transfer information on the reverse of the permit and return the permit and a completed application

for transfer to the RA. Transfer documents must be notarized as specified in paragraph (g)(1) of this section.

(8) *Renewal.* (i) Renewal of a commercial vessel moratorium permit for Gulf shrimp is contingent upon compliance with the recordkeeping and reporting requirements for Gulf shrimp specified in § 622.5(a)(1)(iii).

(ii) A commercial vessel moratorium permit for Gulf shrimp that is not renewed will be terminated and will not be reissued during the moratorium. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

[61 FR 34937, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 622.5 Recordkeeping and reporting.

Participants in fisheries governed in this part are required to keep records and report as follows.

(a) *Commercial vessel owners and operators*—(1) *Requirements by species*—(i) *Coastal migratory pelagic fish.* The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv), who is selected to report by the SRD, must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(ii) *Gulf reef fish.* The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(iii) *Gulf shrimp*—(A) *General reporting requirement.* The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(B) *Electronic logbook reporting.* The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued and who is selected by the SRD must participate in the NMFS-sponsored electronic logbook reporting program as directed by the SRD. In addition, such owner or operator must provide information regarding the size and number of shrimp trawls deployed and the type of BRD and turtle excluder device used, as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(1)(iii)(B) is required for permit renewal.

(C) *Vessel and Gear Characterization Form.* All owners or operators of vessels applying for or renewing a commercial vessel moratorium permit for Gulf shrimp must complete an annual Gulf Shrimp Vessel and Gear Characterization Form. The form will be provided by NMFS at the time of permit application and renewal. Compliance with this reporting requirement is required for permit issuance and renewal.

(D) *Landings report.* The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must annually report the permitted vessel's total annual landings of shrimp and value, by species, on a form provided by the SRD. Compliance with this reporting requirement is required for permit renewal.

(iv) *South Atlantic snapper-grouper.* (A) The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form

available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(C) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(v) *South Atlantic golden crab*. The owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under § 622.4(a)(2)(x), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD.

(vi) *Atlantic dolphin and wahoo*. The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4 (a)(2)(xii), or whose vessel fishes for or lands Atlantic dolphin or wahoo in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(vii) *South Atlantic rock or penaeid shrimp*. The owner or operator of a vessel for which a commercial permit for South Atlantic rock shrimp or South Atlantic penaeid shrimp has been issued, as required under § 622.4(a)(2)(viii) or (xiii), respectively, or whose vessel fishes for or lands South Atlantic rock shrimp or South Atlantic penaeid shrimp in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(2) *Reporting deadlines*. (i) Completed fishing records required by paragraphs (a)(1)(i), (ii), (iv), (vi), and (vii) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(ii) Reporting forms required in paragraph (a)(1)(v) of this section must be submitted to the SRD postmarked not later than 30 days after sale of the golden crab offloaded from a trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Coastal migratory pelagic fish, reef fish, snapper-grouper, and Atlantic dolphin and wahoo*. The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels*. Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats*. Completed fishing records required by paragraph (b)(1) of

this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers*—(1) *Coastal migratory pelagic fish*. (i) A person who purchases coastal migratory pelagic fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters who is selected to report by the SRD must submit information on forms provided by the SRD. This information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no coastal migratory pelagic fish were received during a calendar month, a report so stating must be submitted on one of the forms, in accordance with the instructions on the form, and must be postmarked not later than 5 days after the end of the month. The information to be reported is as follows:

(A) Dealer's or processor's name and address.

(B) County where fish were landed.

(C) Total poundage of each species received during that month, or other requested interval.

(D) Average monthly price paid for each species.

(E) Proportion of total poundage landed by each gear type.

(ii) *Alternate SRD*. For the purposes of paragraph (c)(1)(i) of this section, in the states from New York through Virginia, or in the waters off those states, ''SRD'' means the Science and Research Director, Northeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter), or a designee.

(2) *Gulf red drum*. A dealers or processor who purchases red drum harvested from the Gulf who is selected to report by the SRD must report to the SRD such information as the SRD may request and in the form and manner as the SRD may require. The information required to be submitted must include, but is not limited to, the following:

(i) Dealer's or processor's name and address.

(ii) State and county where red drum were landed.

(iii) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

(3) *Gulf reef fish*. A person who purchases Gulf reef fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters must maintain records and submit information as follows:

(i) A dealer must maintain at his/her principal place of business a record of Gulf reef fish that he/she receives. The record must contain the name of each fishing vessel from which reef fish were received and the date, species, and quantity of each receipt. A dealer must retain such record for at least 1 year after receipt date and must provide such record for inspection upon the request of an authorized officer or the SRD.

(ii) When requested by the SRD, a dealer must provide information from his/her record of Gulf reef fish received the total poundage of each species received during the month, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type. This information must be provided on forms available from the SRD and must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no reef fish were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month.

(iii) The operator of a car or truck that is used to pick up from a fishing vessel reef fish harvested from the Gulf must maintain a record containing the name of each fishing vessel from which reef fish on the car or truck have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

(4) *Gulf shrimp*. A person who purchases shrimp from a vessel, or person, that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that

lands shrimp in an adjoining state, must provide the following information when requested by the SRD:

(i) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel.

(ii) Amount of shrimp received by species and size category for each receipt.

(iii) Exvessel value, by species and size category, for each receipt.

(5) *South Atlantic snapper-grouper*. (i) A person who purchases South Atlantic snapper-grouper that were harvested from the EEZ or from adjoining state waters and who is selected to report by the SRD and a dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must provide information on receipts of South Atlantic snapper-grouper and prices paid, by species, on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no South Atlantic snapper-grouper were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month. However, during complete months encompassed by the wreckfish spawning-season closure (that is, February and March), a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

(ii) A dealer reporting South Atlantic snapper-grouper other than wreckfish may submit the information required in paragraph (c)(5)(i) of this section via facsimile (fax).

(iii) A dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(6) *South Atlantic golden crab*. A dealer who receives from a fishing vessel golden crab harvested from the South Atlantic EEZ and who is selected by the SRD must provide information on receipts of, and prices paid for, South Atlantic golden crab to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD.

(7) *South Atlantic rock shrimp*. (i) A dealer who has been issued a permit for rock shrimp, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of rock shrimp and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) On demand, a dealer who has been issued a dealer permit for rock shrimp, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of rock shrimp.

(8) *Atlantic dolphin and wahoo*. (i) A dealer who has been issued a permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of Atlantic dolphin and wahoo and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) For the purposes of paragraph (c)(8)(i) of this section, in the states from Maine through Virginia, or in the waters off those states, ''SRD'' means the Science and Research Director, Northeast Fisheries Science Center, NMFS, (see Table 1 of § 600.502 of this chapter), or a designee.

(iii) On demand, a dealer who has been issued a dealer permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of dolphin and wahoo.

(d) *Individuals with coral or live rock permits*. (1) An individual with a Federal allowable octocoral permit must submit a report of harvest to the SRD.

Specific reporting requirements will be provided with the permit.

(2) A person with a Federal aquacultured live rock permit must report to the RA each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(i) Permit number of site and date of deposit.

(ii) Geological origin of material deposited.

(iii) Amount of material deposited.

(iv) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(3) A person who takes aquacultured live rock must submit a report of harvest to the RA. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

(e) *Additional data and inspection*. Additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or parts thereof available for inspection by the SRD or an authorized officer upon request.

(f) *Commercial vessel, charter vessel, and headboat inventory*. The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under paragraph (a) or (b) of this section must provide the following information when interviewed by the SRD:

(1) Name and official number of vessel and permit number, if applicable.

(2) Length and tonnage.

(3) Current home port.

(4) Fishing areas.

(5) Ports where fish were offloaded during the last year.

(6) Type and quantity of gear.

(7) Number of full- and part-time fishermen or crew members.

[61 FR 34940, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 59126, Nov. 2, 1999; 64 FR 68935, Dec. 9, 1999; 67 FR 43565, June 28, 2002; 69 FR 30241, May 27, 2004; 70 FR 73387, Dec. 12, 2005; 71 FR 56047, Sept. 26, 2006; 73 FR 410, Jan. 3, 2008]

§ 622.6 Vessel and gear identification.

(a) *Vessel identification*—(1) *Applicability*—(i) *Official number*. A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or possesses *pelagic sargassum* in the South Atlantic EEZ, must display its official number—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(C) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(ii) *Official number and color code*. The following vessels must display their official number as specified in paragraph (a)(1)(i) of this section and, in addition, must display their assigned color code: A vessel for which a permit has been issued to fish with a sea bass pot, as required under § 622.4(a)(2)(vi); a vessel in the commercial Caribbean reef fish fishery fishing with traps; and a vessel in the Caribbean spiny lobster fishery. Color codes required for the Caribbean reef fish fishery and Caribbean spiny lobster fishery are assigned by Puerto Rico or the U.S. Virgin Islands, whichever is applicable; color codes required in all other fisheries are assigned by the RA. The color code must be displayed—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly

visible from an enforcement vessel or aircraft.

(B) In the form of a circle permanently affixed to or painted on the vessel.

(C) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(2) *Duties of operator*. The operator of a vessel specified in paragraph (a)(1) of this section must keep the official number and the color code, if applicable, clearly legible and in good repair and must ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code, if applicable, from an enforcement vessel or aircraft.

(b) *Gear identification*—(1) *Traps/pots and associated buoys*—(i) *Traps or pots*—(A) *Caribbean EEZ*. A fish trap or spiny lobster trap used or possessed in the Caribbean EEZ must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified.

(B) *Gulf and South Atlantic EEZ*. A sea bass pot used or possessed in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), or a sea bass pot on board a vessel with a commercial permit for South Atlantic snapper-grouper, must have a valid identification tag issued by the RA attached. A golden crab trap used or possessed in the South Atlantic EEZ or on board a vessel with a commercial permit for golden crab must have the commercial vessel permit number permanently affixed so as to be easily distinguished, located, and identified; an identification tag issued by the RA may be used for this purpose but is not required.

(ii) *Associated buoys*. A buoy that is attached to a trap or pot must display the official number and assigned color code so as to be easily distinguished, located, and identified as follows:

(A) *Caribbean EEZ*. Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(B) *South Atlantic EEZ*. In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the official number and color code assigned by the RA. However, no color code is required on a buoy attached to a golden crab trap.

(iii) *Presumption of ownership*. A Caribbean spiny lobster trap, a fish trap, a golden crab trap, or a sea bass pot in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps and pots that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(iv) *Unmarked traps, pots, or buoys*. An unmarked Caribbean spiny lobster trap, a fish trap, a golden crab trap, a sea bass pot, or a buoy deployed in the EEZ where such trap, pot, or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(2) *Gillnet buoys*. On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, the float line of each gillnet possessed, including any net in use, must have a maximum of nine distinctive floats, i.e., different from the usual net buoys, spaced uniformly at a distance of 100

yd (91.4 m) or less. Each such distinctive float must display the official number of the vessel.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43957, Aug. 27, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 59126, Nov. 2, 1999; 65 FR 52957, Aug. 31, 2000; 67 FR 22362, May 3, 2002; 67 FR 51078, Aug. 7, 2002; 68 FR 57378, Oct. 3, 2003; 70 FR 62080, Oct. 28, 2005; 73 FR 410, Jan. 3, 2008]

§ 622.7 Prohibitions.

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

(a) Engage in an activity for which a valid Federal permit, license, or endorsement is required under § 622.4 without such permit, license, or endorsement.

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), (q), or (r) or in §§ 622.18 or 622.19.

(c) Fail to display a permit, license, or endorsement, or other required identification, as specified in § 622.4(i).

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in § 622.5(a) through (f).

(e) Fail to make a fish, or parts thereof, available for inspection, as specified in § 622.5(e).

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 622.6(a) and (b) or § 622.4(r)(11).

(g) Fail to comply with any requirement or restriction regarding ITQ coupons, as specified in § 622.15(c)(3), (c)(5), (c)(6), or (c)(7).

(h) Possess wreckfish as specified in § 622.15(c)(4), receive wreckfish except as specified in § 622.15(c)(7), or offload a wreckfish except as specified in § 622.15 (d)(3) and (d)(4).

(i) Transfer—

(1) A wreckfish, as specified in § 622.15(d)(1);

(2) A limited-harvest species, as specified in § 622.32(c) introductory text;

(3) A species/species group subject to a bag limit, as specified § 622.39(a)(1);

(4) South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in § 622.41(d)(2)(iii); or

(5) A species subject to a commercial trip limit, as specified in § 622.44.

(j) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in § 622.31.

(k) Fish for, harvest, or possess a prohibited species, or a limited-harvest species in excess of its limitation, sell or purchase such species, fail to comply with release requirements, or molest or strip eggs from a Caribbean spiny lobster, as specified in § 622.32.

(l) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in § 622.33, § 622.34, or § 622.35, or as may be specified under § 622.46 (b) or (c).

(m) Harvest, possess, offload, sell, or purchase fish in excess of the seasonal harvest limitations, as specified in § 622.36.

(n) Except as allowed under § 622.37(c)(2) and (3) for king and Spanish mackerel, possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in § 622.37.

(o) Fail to maintain a fish intact through offloading ashore, as specified in § 622.38.

(p) Exceed a bag or possession limit, as specified in § 622.39.

(q) Fail to comply with the limitations on traps and pots, including but not limited to: Tending requirements, constructions requirements, and area specific restrictions, as specified in § 622.40.

(r) Fail to comply with the species-specific limitations, as specified in § 622.41.

(s) Fail to comply with the restrictions that apply after closure of a fishery, as specified in § 622.43.

(t) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in § 622.44.

(u) Fail to comply with the restrictions on sale/purchase, as specified in § 622.45.

(v) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 622.46(a).

(w) Fail to comply with the requirements for observer coverage as specified in § 622.8.

(x) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(y) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

(z) Fish for or possess golden crab in or from a fishing zone or sub-zone of the South Atlantic EEZ other than the zone or sub-zone for which the vessel is permitted or authorized, as specified in § 622.17(b).

(aa) Falsify information submitted regarding an application for testing a BRD or regarding testing of a BRD, as specified in § 622.41(g)(3)(i) or (h)(3).

(bb) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a vessel monitoring system (VMS) unit or communication service provider.

(cc) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in § 622.4(a)(5)(i) through (iv).

(dd) When a vessel that is subject to Federal fishing regulations is at sea or offloading, own or operate such vessel with a person aboard whose operator permit is revoked, suspended, or modified.

(ee) Fail to comply with any provision related to a vessel monitoring system as specified in § 622.9, including but not limited to, requirements for use, installation, activation, access to data, procedures related to interruption of VMS operation, and prohibitions on interference with the VMS.

(ff) Fail to comply with the protected species conservation measures as specified in § 622.10.

(gg) Fail to comply with any provision related to the Gulf red snapper IFQ program as specified in § 622.16.

(hh) Falsify any information required to be submitted regarding the Gulf red snapper IFQ program as specified in § 622.16.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43957, Aug. 27, 1996; 61 FR 48415, Sept. 13, 1996; 62 FR 67722, Dec. 30, 1997; 63 FR 38301, July 16, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 37693, July 13, 1999; 64 FR 43941, Aug. 12, 1999; 64 FR 68935, Dec. 9, 1999; 67 FR 22361, May 3, 2002; 67 FR 43565, June 28, 2002; 68 FR 2194, Jan. 16, 2003; 70 FR 73387, Dec. 12, 2005; 71 FR 45434, Aug. 9, 2006; 71 FR 67459, Nov. 22, 2006; 73 FR 410, Jan. 3, 2008]

§ 622.8 At-sea observer coverage.

(a) *Required coverage*—(1) *Pelagic sargassum.* A vessel that harvests or possesses pelagic sargassum on any trip in the South Atlantic EEZ must carry a NMFS-approved observer.

(2) *Golden crab.* A vessel for which a Federal commercial permit for golden crab has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(3) *Gulf reef fish.* A vessel for which a Federal commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(3).

(4) *South Atlantic rock or penaeid shrimp.* A vessel for which a Federal commercial permit for South Atlantic rock shrimp or South Atlantic penaeid shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(5) *Gulf shrimp.* A vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(5).

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in

writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) *Observer accommodations and access*. An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

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

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

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

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

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

[61 FR 43957, Aug. 27, 1996, as amended at 63 FR 57590, Oct. 28, 1998; 68 FR 57378, Oct. 3, 2003; 70 FR 32272, June 2, 2005; 70 FR 73387, Dec. 12, 2005; 71 FR 56047, Sept. 26, 2006]

§ 622.9 Vessel monitoring systems (VMSs).

(a) *Requirements for use of a VMS*—(1) *South Atlantic rock shrimp*. An owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp must ensure that such vessel has an operating VMS approved by NMFS for use in the South Atlantic rock shrimp fishery on board when on a trip in the South Atlantic. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(2) *Gulf reef fish*. The VMS requirements of this paragraph (a)(2) apply throughout the Gulf of Mexico and adjacent states.

(i) *General VMS requirement*. An owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit even when under charter, must ensure that such vessel has an operating VMS approved by NMFS for use in the Gulf reef fish fishery on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (a)(2)(iv) of this section and in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This NOAA Enforcement Vessel Monitoring System Requirements document is available from NMFS, Office for Law Enforcement (OLE), Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS OLE maintains a current list of approved VMS units and communication providers which is available from the VMS Support Center, NMFS OLE, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910 or by calling toll free 888–219–9228. If a VMS unit approved for the Gulf reef fish fishery is removed from the approved list by NMFS OLE, a vessel owner who purchased and installed such a VMS unit prior to its removal from the approved list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by NMFS OLE. At the end of a VMS unit's service life, it must be replaced with a currently approved unit for the fishery.

(ii) *Hourly reporting requirement*. An owner or operator of a vessel subject to the requirements of paragraph (a)(2) of this section must ensure that the required VMS unit transmits a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day unless exempted under paragraphs (a)(2)(iii) or (iv) of this section.

(iii) *In-port exemption*. While in port, an owner or operator of a vessel with a

type-approved VMS unit configured with the 4–hour reporting feature may utilize the 4–hour reporting feature rather than comply with the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section. Once the vessel is no longer in port, the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section applies. For the purposes of this paragraph (a)(2) of this section, ''in port'' means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(iv) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a VMS operating at all times as specified in paragraph (a)(2)(i) of this section can be exempted from that requirement and may power down the required VMS unit if—

(A) The vessel will be continuously out of the water or in port, as defined in paragraph (a)(2)(iii) of this section, for more than 72 consecutive hours;

(B) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS OLE VMS personnel as specified in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This is a one-time requirement. The letter of exemption must be maintained on board the vessel and remains valid for all subsequent power-down requests conducted consistent with the provisions of paragraphs (a)(2)(iv)(C) and (D) of this section.

(C) Prior to each power-down, the owner or operator of the vessel files a report to NMFS OLE VMS program personnel, using the VMS unit's e-mail, that includes the name of the person filing the report, vessel name, vessel U.S. Coast Guard documentation number or state registration number, commercial vessel reef fish permit number, vessel port location during VMS power down, estimated duration of the power down exemption, and reason for power down; and

(D) The owner or operator enters the power-down code through the use of the VMS Declaration form on the terminal and, prior to powering down the VMS, receives a confirmation, through the VMS terminal, that the form was successfully delivered.

(v) *Declaration of fishing trip and gear.* Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel.

(b) *Installation and activation of a VMS.* Only a VMS that has been approved by NMFS for the applicable fishery may be used, and the VMS must be installed by a qualified marine electrician. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833; and

(2) Submit to NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, a statement certifying compliance with the checklist, as prescribed on the checklist.

(3) Submit to NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, a vendor-completed installation certification checklist, which is available from NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, phone: 800–758–4833, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly,

the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of fish in a fishery subject to VMS requirements in this section, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

[71 FR 45434, Aug. 9, 2006, as amended at 72 FR 73273, Dec. 27, 2007]

§ 622.10 Conservation measures for protected resources.

(a) *Atlantic dolphin and wahoo pelagic longliners.* The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(2)(xii), and that has on board a pelagic longline must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS. Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, as specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively. For the purpose of this paragraph, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(b) *Gulf reef fish commercial vessels and charter vessels/headboats*—(1) *Sea turtle conservation measures.* The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS. Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board a dipnet, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in 50 CFR 635.21(c)(5)(i)(E) through (L) with the following modifications: the dipnet handle can be of variable length, only one NMFS approved short-handled dehooker is required (i.e., CFR 635.21(c)(5)(i)(G) or (H)); and life rings, seat cushions, life jackets, and life vests may be used as alternatives to tires for cushioned surfaces as specified in 50 CFR 635.21(c)(5)(i)(F). Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, long-handled line clipper, a short-handled and a long-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in 50 CFR 635.21(c)(5)(i)(A) through (L) with the following modifications: only one NMFS approved long-handled dehooker (50 CFR 635.21(c)(5)(i)(B) or (C)) and one NMFS-approved short-handled dehooker (50 CFR 635.21(c)(5)(i)(G) or (H)) are required; and life rings, seat cushions, life jackets, and life vests may be used as alternatives to tires for cushioned surfaces as specified in 50 CFR 635.21(c)(5)(i)(F).

(2) *Smalltooth sawfish conservation measures.* The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, that incidentally catches a smalltooth sawfish must—

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except for with a long-handled dehooker.

[71 FR 45435, Aug. 9, 2006]

Subpart B—Effort Limitations

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

The provisions of this section apply to wreckfish in or from the South Atlantic EEZ.

(a) *Percentage shares.* (1) In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish have been assigned. Each person has been notified by the RA of his or her percentage share and shareholder certificate number.

(2) All or a portion of a person's percentage shares may be transferred to another person. Transfer of shares must be reported on a form available from the RA. The RA will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RA. The confirmation date will normally be not later than 3 working days after receipt of a properly completed transfer form. A fee is charged for each transfer of shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(b) *Lists of wreckfish shareholders and permitted vessels.* Annually, on or about March 1, the RA will provide each wreckfish shareholder with a list of all wreckfish shareholders and their percentage shares, reflecting share transactions on forms received through February 15. Annually by April 15, the RA will provide each dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), with a list of vessels for which wreckfish permits have been issued, as required under § 622.4(a)(2)(vii). Annually, by April 15, the RA will provide each wreckfish shareholder with a list of dealers who have been issued dealer permits for wreckfish. From April 16 through January 14, updated lists will be provided when required. Updated lists may be obtained at other times or by a person who is not a wreckfish shareholder or wreckfish dealer permit holder by written request to the RA.

(c) *ITQs.* (1) Annually, as soon after March 1 as the TAC for wreckfish for the fishing year that commences April 16 is known, the RA will calculate each wreckfish shareholder's ITQ. Each ITQ is the product of the wreckfish TAC, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each wreckfish shareholder's percentage share, reflecting share transactions reported on forms received by the RA through February 15. Thus, the ITQs will be in terms of eviscerated weight of wreckfish.

(2) The RA will provide each wreckfish shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred from one wreckfish shareholder to another by completing the sale endorsement thereon (that is, the signature and shareholder certificate number of the buyer). An ITQ coupon may be possessed only by the shareholder to whom it has been issued, or by the shareholder's employee, contractor, or agent, unless the ITQ coupon has been transferred to another shareholder. An ITQ coupon that has been transferred to another shareholder may be possessed only by the shareholder whose signature appears on the coupon as the buyer, or by the shareholder's employee, contractor, or agent, and with all required sale endorsements properly completed.

(4) Wreckfish may not be possessed on board a fishing vessel—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel;

(ii) That does not have on board a commercial vessel permit for wreckfish, as required under § 622.4(a)(2)(vii); or

(iii) That does not have on board logbook forms for that fishing trip, as required under § 622.5(a)(1)(iv)(B).

(5) Prior to termination of a trip, a signature and date signed must be affixed in ink to the ''Fisherman'' part of ITQ coupons in denominations equal to the eviscerated weight of the wreckfish on board. The ''Fisherman'' part of each such coupon must be separated from the coupon and submitted with the logbook forms required by § 622.5(a)(1)(iv)(B) for that fishing trip.

(6) The ''Fish House'' part of each such coupon must be given to the dealer to whom the wreckfish are transferred in amounts totaling the eviscerated weight of the wreckfish transferred to that dealer. A wreckfish may be transferred only to a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4).

(7) A dealer may receive a wreckfish only from a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii). A dealer must receive the ''Fish House'' part of ITQ coupons in amounts totaling the eviscerated weight of the wreckfish received; enter the permit number of the vessel from which the wreckfish were received, enter the date the wreckfish were received, enter the dealer's permit number, and sign each such ''Fish House'' part; and submit all such parts with the dealer reports required by § 622.5(c)(5)(i).

(8) An owner or operator of a vessel and a dealer must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(d) *Wreckfish limitations.* (1) A wreckfish taken in the South Atlantic EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the South Atlantic EEZ.

(2) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the South Atlantic EEZ or in a South Atlantic coastal state will be presumed to have been harvested from the South Atlantic EEZ unless accompanied by documentation that it was harvested from other than the South Atlantic EEZ.

(3) A wreckfish may be offloaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a dealer permit for wreckfish, as required under § 622.4 (a)(4), the wreckfish shareholder or the vessel operator must advise NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344), of the location not less than 24 hours prior to offloading.

[61 FR 34934, July 3, 1996, as amended at 64 FR 59126, Nov. 2, 1999; 73 FR 410, Jan. 3, 2008]

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

(a) *General.* This section establishes an IFQ program for the commercial fishery for Gulf red snapper. Under the IFQ program, the RA initially will assign eligible participants IFQ shares equivalent to a percentage of the annual commercial red snapper quota, based on their applicable historical landings. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel endorsement. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf red snapper IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section apply to Gulf red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement as required by § 622.4(a)(2)(ix) or for a person with a Gulf red snapper IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, e.g., registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. Assistance with online functions is available from IFQ Customer Service by calling 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf red snapper IFQ dealer endorsement must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to set up the required IFQ online account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the FEDERAL REGISTER, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(b) *Procedures for initial implementation*—(1) *Determination of eligibility for initial IFQ shares.* To be eligible as an initial IFQ shareholder a person must own a Class 1 or Class 2 Gulf red snapper license as of November 22, 2006. For the purposes of this paragraph, an owner of a license is defined as the person who controls transfer of the license and is listed as the qualifier on the face of the license. NMFS' permit records are the sole basis for determining eligibility based on Class 1 or Class 2 license history. No more than one initial eligibility will be granted based upon a given Class 1 or Class 2 license.

(2) *Calculation of initial IFQ shares and allocation*—(i) *IFQ shares.* The RA will calculate initial IFQ shares based on the highest average annual landings of Gulf red snapper associated with each shareholder's current Class 1 or Class 2 license during the applicable landings history. The applicable landings history for a Class 1 license owner whose license was not issued based on historical captain status includes any 10 consecutive years of landings data from 1990 through 2004; for a Class 1 license owner whose license was issued on the basis of historical captain status, all years of landings data from 1998 through 2004; and for a Class 2 license holder, any 5 years of landings data from 1998 through 2004. All landings associated with a current Class 1 or Class 2 license for the applicable landings history, including those reported by a person who held the license prior to the current license owner, will be attributed to the current license owner. Only legal landings reported in compliance

with applicable state and Federal regulations will be accepted. Each shareholder's initial share is derived by dividing the shareholder's highest average annual landings during the applicable landings history by the sum of the highest average annual landings of all shareholders during the respective applicable landings histories. Initial IFQ shares will not be issued in denominations of less than 0.0001 percent.

(ii) *Initial share set-aside to accommodate resolution of appeals*. During the first year of implementation of this IFQ program only, the RA will reserve a 3–percent IFQ share, prior to the initial distribution of shares, to accommodate resolution of appeals, if necessary. Any portion of the 3–percent share remaining after the appeals process is completed will be distributed as soon as possible among initial shareholders in direct proportion to the percentage share each was initially allocated. If resolution of appeals requires more than a 3–percent share, the shares of all initial shareholders would be reduced accordingly in direct proportion to the percentage share each was initially allocated.

(iii) *IFQ allocation*. IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper.

(iv) *Special procedure for initial calculation of 2007 IFQ allocations*. Because of uncertainty regarding the 2007 commercial quota for Gulf red snapper and the timing of its implementation and to avoid the possibility of having to revoke some proportion of initial allocation if the quota was subsequently reduced, the RA may initially calculate the 2007 IFQ allocations based on a proxy commercial quota. If a commercial quota adjustment for Gulf red snapper has not been submitted for review by the Secretary of Commerce in time for calculation of 2007 IFQ allocations, the RA will initially calculate 2007 allocations based on a proxy commercial quota of 2.55 million lb (1.16 million kg). Alternatively, if a commercial quota adjustment for Gulf red snapper has been submitted for review by the Secretary of Commerce in time to allow calculation of 2007 allocations, the RA will base 2007 IFQ allocations on the proposed quota. Under either scenario, as soon as the actual 2007 commercial quota is final, but no later than July 1, 2007, the RA will adjust the 2007 IFQ allocations, as necessary, consistent with the actual quota.

(3) *Shareholder notification regarding landings history, initial determination of IFQ shares and allocations, and IFQ account setup information*. (i) As soon as possible after November 22, 2006, the RA will mail each Class 1 or Class 2 red snapper license owner information pertinent to the IFQ program. This information will include—

(A) Gulf red snapper landings associated with the owner's license during each year of the applicable landings history;

(B) The highest average annual red snapper landings based on the owner's applicable landings history;

(C) The owner's initial IFQ share based on the highest average annual landings associated with the owner's applicable landings history;

(D) The initial IFQ allocation;

(E) Instructions for appeals;

(F) General instructions regarding procedures related to the IFQ online system, including how to set up an online account; and

(G) A user identification number--the personal identification number (PIN) will be provided in a subsequent letter.

(ii) The RA will provide this information, via certified mail return receipt requested, to the license owner's address of record as listed in NMFS' permit files. A license owner who does not receive such notification from the RA by December 22, 2006 must contact the RA to clarify eligibility status and landings and initial share information.

(iii) The initial share information provided by the RA is based on the highest average landings associated with the owner's applicable landings history; however, a license owner may

select a different set of years of landings, consistent with the owner's applicable landings history, for the calculation of the initial IFQ share. The license owner must submit that information to the RA postmarked no later than December 22, 2006. If alternative years, consistent with the applicable landings history, are selected, revised information regarding shares and allocations will be posted on the online IFQ accounts no later than January 1, 2007. A license owner who disagrees with the landings or eligibility information provided by the RA may appeal the RA's initial determinations.

(4) *Procedure for appealing IFQ eligibility and/or landings information*. The only items subject to appeal under this IFQ system are initial eligibility for IFQ shares based on ownership of a Class 1 or Class 2 license, the accuracy of the amount of landings, and correct assignment of landings to the license owner. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than April 1, 2007 and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final decision.

(i) *Eligibility appeals*. NMFS' records of Class 1 and Class 2 licenses are the sole basis for determining ownership of such licenses. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(ii) *Landings appeals*. Landings data for 1990 through 1992 are not subject to appeal. Appeals regarding landings data for 1993 through 2004 will be based solely on NMFS' logbook records. If NMFS' logbooks are not available, state landings records or data that were submitted in compliance with applicable Federal and state regulations, on or before June 30, 2005, can be used.

(5) Dealer notification and IFQ account setup information. As soon as possible after November 22, 2006, the RA will mail each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a red snapper IFQ dealer endorsement which can be downloaded from the IFQ website at *ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package will include general information about the IFQ program and instructions for accessing the IFQ website and establishing an IFQ dealer account.

(c) *IFQ operations and requirements*—(1) *IFQ Landing and transaction requirements*. (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel endorsement. Such red snapper can only be received by a dealer with a Gulf red snapper IFQ dealer endorsement. The person landing the red snapper must hold or be assigned IFQ allocation at least equal to the pounds of red snapper landed, except as provided in paragraph (c)(1)(ii) of this section.

(ii) An IFQ shareholder or his agent or employee assigned to land the shareholder's allocation can legally exceed, by up to 10 percent, the shareholder's allocation remaining on the last fishing trip of the fishing year. Any such overage will be deducted from the shareholder's allocation for the subsequent fishing year.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ website at ifq.sero.nmfs.noaa.gov at the time of the transaction in accordance with reporting form and instructions provided on the website. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel value of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN number when the transaction report is submitted. After the dealer submits the report and the information has been verified, the website will send a transaction approval code to the dealer and the allocation holder.

(2) *IFQ cost recovery fees*. As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel value of Gulf red snapper landed under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the FEDERAL REGISTER.

(i) *Payment responsibility*. The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility*. A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system, no later than 30 days after the end of each calendar-year quarter; however, fees may be submitted at any time before that deadline. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure*. For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using pay.gov via the IFQ system. Authorized payments methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees*. The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ website and official notice via mail indicating the applicable fees are delinquent; the dealer's IFQ account has been suspended pending payment of the applicable fees; and notice of intent to annul the dealer's IFQ endorsement.

(B) On or about the 61st day after the end of each calendar-year quarter, the RA will mail to a dealer whose cost recovery fee payment remains delinquent, official notice documenting the dealer's IFQ endorsement has been annulled.

(C) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(v) *Annual IFQ dealer ex-vessel value report*. The IFQ online system will generate an annual IFQ Dealer Ex-Vessel Value Report for each IFQ dealer. The report will include quarterly and annual information regarding the amount and value of IFQ red snapper received by the dealer, the associated cost recovery fees, and the status of those fees. The dealer's acceptance of this report constitutes compliance with the annual dealer IFQ reporting requirement.

(3) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing*. For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the

red snapper are to be received. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1–866–425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at ifq.sero.nmfs.noaa.gov. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading*. IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper*. At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code*. Possession of IFQ red snapper from the time of transfer from a vessel through possession by a dealer is prohibited unless the IFQ red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession.

(4) *Transfer of IFQ shares and allocation*. Through January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred to any U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel endorsement, and Gulf red snapper IFQ allocation are required to possess, land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers*. Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent--unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures*. A shareholder must initiate the request for the RA to transfer IFQ shares by using the online Gulf red snapper IFQ website at *ifq.sero.nmfs.noaa.gov*. Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. NMFS will evaluate and verify the information entered. If the information is not accepted, NMFS will send the shareholder an electronic message explaining the reason(s). If the information is accepted, NMFS will send the shareholder an initial transaction approval code and make an application for share transfer available for downloading and printing. The shareholder and eligible transferee must complete the application, have their signatures notarized, and mail the

signed application to the RA at least 30 days prior to the date on which the applicant desires to have the transfer effective. The signed application must be received by the RA prior to December 1. See paragraph (c)(4)(v) of this section regarding a prohibition on transfer during December of each year. If the RA approves the application for transfer, the online system will send the shareholder and the transferee an electronic message acknowledging the approval; a transfer is effective upon receipt of the message. The adjusted shares resulting from a transfer may be viewed online by each of the respective shareholders involved in the transaction. If the RA does not approve the transfer application, the RA will return the application to the shareholder with an explanation and instructions for correcting any deficiencies.

(iii) *Allocation transfers*. An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void.

(iv) *Allocation transfer procedures*. Unlike share transfers which require a notarized application for transfer, allocation transfers can be accomplished online via the red snapper IFQ website. An IFQ allocation holder can initiate an allocation transfer by logging on to the red snapper IFQ website at *ifq.sero.nmfs.noaa.gov*, entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. If the transfer is approved, the website will provide a transaction approval code to the transferor and transferee confirming the transaction.

(v) *Prohibition of transfer of shares during December each year*. No IFQ shares may be transferred during December of each year. This period is necessary to provide the RA sufficient time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quota for Gulf red snapper has changed, and update shares and allocations for the upcoming fishing year.

(5) *Fleet management and assignment of IFQ allocation*. An IFQ shareholder or IFQ allocation holder who owns more than one vessel with a valid Gulf reef fish vessel permit and a valid Gulf red snapper IFQ vessel endorsement may assign IFQ allocation to a person aboard such vessel and provide that person the IFQ account information necessary to conduct landing transactions.

(6) *IFQ share cap*. No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of the maximum share initially issued to a person for the 2007 fishing year, as of the date appeals are resolved and shares are adjusted accordingly. For the purposes of considering the share cap, a corporation's total IFQ share is defined as the sum of the IFQ shares held by the corporation and the IFQ shares held by individual shareholders of the corporation. A corporation must identify the shareholders of the corporation and their percent of shares in the corporation.

(7) *Redistribution of shares resulting from permanent permit or endorsement revocation*. If a shareholder's commercial vessel permit for Gulf reef fish or Gulf red snapper IFQ vessel endorsement has been permanently revoked under provisions of 15 CFR part 904, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation*. On or about January 1 each year, IFQ shareholders will be notified, via the IFQ website at *ifq.sero.nmfs.noaa.gov*, of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares resulting from permanent revocation of applicable permits or endorsements under 15 CFR part 904. Allocation is calculated by multiplying IFQ share times the annual red snapper commercial quota.

Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

[71 FR 67459, Nov. 22, 2006, as amended at 72 FR 73274, Dec. 27, 2007; 73 FR 410, Jan. 3, 2008]

§ 622.17 South Atlantic golden crab controlled access.

(a) *General*. In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial commercial vessel permits have been issued for the fishery. All permits in the fishery are issued on a fishing-year (calendar-year) basis. No additional permits may be issued except for the northern zone as follows:

(1) The RA will issue up to two new vessel permits for the northern zone. Selection will be made from the list of historical participants in the South Atlantic golden crab fishery. Such list was used at the October 1995 meeting of the South Atlantic Fishery Management Council and was prioritized based on pounds of golden crab landed, without reference to a specific zone. Individuals on the list who originally received permits will be deleted from the list.

(2) The RA will offer in writing an opportunity to apply for a permit for the northern zone to the individuals highest on the list until two individuals accept and apply in a timely manner. An offer that is not accepted within 30 days after it is received will no longer be valid.

(3) An application for a permit from an individual who accepts the RA's offer must be received by the RA no later than 30 days after the date of the individual's acceptance. Application forms are available from the RA.

(4) A vessel permit for the northern zone issued under paragraph (a)(1) of this section, and any successor permit, may not be changed to another zone. A successor permit includes a permit issued to that vessel for a subsequent owner and a permit issued via transfer from that vessel to another vessel.

(b) *Fishing zones*—(1) *Designation of fishing zones*. The South Atlantic EEZ is divided into three fishing zones for golden crab as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 28° N. lat. to 25° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) *Authorization to fish in zones*. Each vessel permit indicates one of the zones specified in paragraph (b)(1) of this section. A vessel with a permit to fish for golden crab in the northern zone or the middle zone may fish only in that zone. A vessel with a documented length overall greater than 65 ft (19.8 m) with a permit to fish for golden crab in the southern zone may fish in that zone, consistent with the provisions of paragraph (b)(3) of this section. A vessel may possess golden crab only in a zone in which it is authorized to fish, except that other zones may be transited if the vessel notifies NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344) in advance and does not fish in a zone in which it is not authorized to fish.

(3) *Small-vessel sub-zone*. Within the southern zone, a small-vessel sub-zone is established bounded on the north by 24°15′ N. lat., on the south by 24°07′ N. lat., on the east by 81°22′ W. long., and on the west by 81°56′ W. long. No vessel with a documented length overall greater than 65 ft (19.8 m) may fish for golden crab in this sub-zone, and a vessel with a documented length overall of 65 ft (19.8 m) or less that is permitted for the southern zone may fish for golden crab only in this sub-zone.

(4) *Procedure for changing zones*. (i) Upon request from an owner of a permitted vessel, the RA will change the zone specified on a permit from the middle or southern zone to the northern zone. No other changes in the zone specified on a permit are allowed, except as specified in paragraph (b)(4)(ii) of this section. An owner of a permitted vessel who desires a change to the northern zone must submit his/her request with the existing permit to the RA.

(ii) [Reserved]

(c) *Transferring permits between vessels*—(1) *Procedure for transferring*. An owner of a vessel who desires a golden crab permit may request that NMFS transfer an existing permit or permits to his or her vessel by returning an existing permit or permits to the RA with an application for a permit for the replacement vessel.

(2) *Vessel size limitations on transferring*. (i) To obtain a permit for the middle or southern zone via transfer, the documented length overall of the replacement vessel may not exceed the documented length overall, or aggregate documented lengths overall, of the replaced vessel(s) by more than 20 percent. The owner of a vessel permitted for the middle or southern zone who has requested that NMFS transfer that permit to a smaller vessel (i.e., downsized) may subsequently request NMFS transfer that permit to a vessel of a length calculated from the length of the permitted vessel immediately prior to downsizing.

(ii) There are no vessel size limitations to obtain a permit for the northern zone via transfer.

(d) *Permit renewal*. NMFS will not renew a commercial vessel permit for South Atlantic golden crab if the permit is revoked or if the RA does not receive a required application for renewal within 6 months after the permit's expiration. See § 622.4(h) for the applicable general procedures and requirements for permit renewals.

[67 FR 22361, May 3, 2002, as amended at 70 FR 73388, Dec. 12, 2005; 73 FR 410, Jan. 3, 2008]

§ 622.18 South Atlantic snapper-grouper limited access.

(a) *General*. The only valid commercial vessel permits for South Atlantic snapper-grouper are those that have been issued under the limited access criteria specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. A commercial vessel permit for South Atlantic snapper-grouper is either a transferable commercial permit or a trip-limited commercial permit.

(b) *Transfers of permits*. A snapper-grouper limited access permit is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, an application for transfer must be submitted to the RA.

(1) *Transferable permits*. (i) An owner of a vessel with a transferable permit may request that the RA transfer the permit to another vessel owned by the same entity.

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit from one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father.

(iii) Except as provided in paragraphs (b)(1)(i) and (ii) of this section, a person desiring to acquire a limited access, transferable permit for South Atlantic snapper-grouper must obtain and exchange two such permits for one new permit.

(iv) A transfer of a permit that is undertaken under paragraph (b)(1)(ii) of this section will constitute a transfer of the vessel's entire catch history to the new owner.

(2) *Trip-limited permits*. An owner of a vessel with a trip- limited permit may request that the RA transfer the permit to another vessel owned by the same entity.

(c) *Renewal*. NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within 60 days of the permit's expiration date.

[70 FR 73388, Dec. 12, 2005]

§ 622.19 South Atlantic rock shrimp limited access.

(a) *Applicability*. For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board.

(b) *Transfer of an endorsement*. A limited access endorsement for South Atlantic rock shrimp is valid only for the vessel and owner named on the permit/endorsement. To change either the vessel or the owner, an application for transfer must be submitted to the RA. An owner of a vessel with an endorsement may request that the RA transfer the endorsement to another vessel

owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of an endorsement under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(c) *Renewal*. The RA will not reissue a limited access endorsement for South Atlantic rock shrimp if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(d) *Non-renewal of inactive endorsements*. In addition to the sanctions and denials specified in § 622.4(j)(1), a limited access endorsement for South Atlantic rock shrimp that is inactive for a period of 4 consecutive calendar years will not be renewed. For the purpose of this paragraph, ''inactive'' means that the vessel with the endorsement has not landed at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

(e) *Reissuance of non-renewed permits*. A permit that is not renewed under paragraph (d) of this section will be made available to a vessel owner randomly selected from a list of owners who had documented landings of rock shrimp from the South Atlantic EEZ prior to 1996 but who did not qualify for an initial limited access endorsement. Owners' names have been placed on the list in accordance with the procedures specified in the FMP for the Shrimp Fishery of the South Atlantic Region.

[70 FR 73388, Dec. 12, 2005]

Subpart C—Management Measures

§ 622.30 Fishing years.

The fishing year for species or species groups governed in this part is January 1 through December 31 except for the following:

(a) *Allowable octocoral*— October 1 through September 30.

(b) *King and Spanish mackerel*. The fishing year for the king and Spanish mackerel bag limits specified in § 622.39(c)(1) is January 1 through December 31. The following fishing years apply only for the king and Spanish mackerel quotas specified in § 622.42(c):

(1) *Gulf migratory group king mackerel*— July 1 through June 30.

(2) *Gulf migratory group Spanish mackerel*—April through March.

(3) *South Atlantic migratory group king and Spanish mackerel*—March through February.

(c) *Wreckfish*— April 16 through April 15.

(d) *South Atlantic greater amberjack*— May 1 through April 30.

(e) *South Atlantic black sea bass*—June 1 through May 31.

[61 FR 34934, July 3, 1996, as amended at 64 FR 3627, Jan. 25, 1999; 70 FR 39190, July 7, 2005; 71 FR 55106, Oct. 23, 2006]

§ 622.31 Prohibited gear and methods.

In addition to the prohibited gear/methods specified in this section, see §§ 622.33, 622.34, and 622.35 for seasonal/area prohibited gear/methods and § 622.41 for species specific authorized and unauthorized gear/methods.

(a) *Explosives*. An explosive (except an explosive in a powerhead) may not be used to fish in the Caribbean, Gulf, or South Atlantic EEZ. A vessel fishing in the EEZ for a species governed in this part, or a vessel for which a permit has been issued under § 622.4, may not have on board any dynamite or similar explosive substance.

(b) *Chemicals and plants*. A toxic chemical may not be used or possessed in a coral area, and a chemical, plant, or plant-derived toxin may not be used to harvest a Caribbean coral reef resource in the Caribbean EEZ.

(c) *Fish traps*. A fish trap may not be used or possessed in the Gulf or South Atlantic EEZ. A fish trap deployed in the Gulf or South Atlantic EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(2) A fish trap may not be used or possessed in the Gulf EEZ west of 85°30′ W. long. and, after February 7, 2007, may not be used or possessed in the Gulf EEZ.

(3) A fish trap used other than where authorized in paragraph (c) (1) or (2) of this section may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(d) *Longlines for wreckfish.* A bottom longline may not be used to fish for wreckfish in the South Atlantic EEZ. A person aboard a vessel that has a longline on board may not retain a wreckfish in or from the South Atlantic EEZ. For the purposes of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 mi (2.4 km) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(e) *Poisons.* (1) A poison, drug, or other chemical may not be used to fish for Caribbean reef fish in the Caribbean EEZ.

(2) A poison may not be used to take Gulf reef fish in the Gulf EEZ.

(3) A poison may not be used to fish for South Atlantic snapper-grouper in the South Atlantic EEZ.

(f) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource or in the Gulf or South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

(g) *Powerheads.* A powerhead may not be used in the Caribbean EEZ to harvest Caribbean reef fish or in the EEZ off South Carolina to harvest South Atlantic snapper-grouper. The possession of a mutilated Caribbean reef fish in or from the Caribbean EEZ, or a mutilated South Atlantic snapper-grouper in or from the EEZ off South Carolina, and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(h) *Rebreathers and spearfishing gear.* In the South Atlantic EEZ, a person using a rebreather may not harvest South Atlantic snapper-grouper with spearfishing gear. The possession of such snapper-grouper while in the water with a rebreather is *prima facie* evidence that such fish was harvested with spearfishing gear while using a rebreather.

(i) *Sea bass pots.* A sea bass pot may not be used in the South Atlantic EEZ south of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL). A sea bass pot deployed in the EEZ south of 28°35.1′ N. lat. may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(j) *Spears and hooks.* A spear, hook, or similar device may not be used in the Caribbean EEZ to harvest a Caribbean spiny lobster. The possession of a speared, pierced, or punctured Caribbean spiny lobster in or from the Caribbean EEZ is *prima facie* evidence of violation of this section.

(k) *Traps for royal red shrimp in the Gulf EEZ and transfer at sea.* A trap may not be used to fish for royal red shrimp in the Gulf EEZ. Possession of a trap and royal red shrimp on board a vessel is prohibited. A trap used to fish for royal red shrimp in the Gulf EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. In addition, royal red shrimp cannot be transferred in the Gulf EEZ, and royal red shrimp taken in the Gulf EEZ cannot be transferred at sea regardless of where the transfer takes place.

(l) *Gillnets and trammel nets in the Caribbean EEZ.* A gillnet or trammel net may not be used in the Caribbean EEZ to fish for Caribbean reef fish or Caribbean spiny lobster. Possession of a gillnet or trammel net and any Caribbean reef fish or Caribbean spiny lobster in or from the Caribbean EEZ is prima facie evidence of violation of this paragraph (l). A gillnet or trammel net used in the Caribbean EEZ to fish for any other species must be tended at all times.

(m) *Weak link.* A bottom trawl that does not have a weak link in the tickler chain may not be used to fish in the Gulf EEZ. For the purposes of this paragraph, a weak link is defined as a length or section of the tickler chain that has a breaking strength less than the chain itself and is easily seen as such when visually inspected.

(n) Gulf reef fish other than sand perch or dwarf sand perch may not be used as bait in any fishery, except that, when purchased from a fish processor, the filleted carcasses and offal of Gulf reef fish may be used as bait in trap

fisheries for blue crab, stone crab, deep-water crab, and spiny lobster.

[61 FR 34934, July 3, 1996, as amended at 62 FR 13987, Mar. 25, 1997; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 67 FR 51079, Aug. 7, 2002; 70 FR 62080, Oct. 28, 2005; 70 FR 76219, Dec. 23, 2005; 71 FR 45435, Aug. 9, 2006; 73 FR 411, Jan. 3, 2008]

§ 622.32 Prohibited and limited-harvest species.

(a) *General*. The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Prohibited species*. Prohibited species, by geographical area, are as follows:

(1) *Caribbean*. (i) Caribbean prohibited coral may not be fished for or possessed in or from the Caribbean EEZ. The taking of Caribbean prohibited coral in the Caribbean EEZ is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

(ii) No person may fish for or possess goliath grouper and Nassau grouper in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

(iii) Egg-bearing spiny lobster in the Caribbean EEZ must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(iv) No person may fish for, or possess on board a fishing vessel, a Caribbean queen conch in or from the Caribbean EEZ, except during October 1 through June 30 in the area east of 64°34′ W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands.

(2) *Gulf*. (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the Gulf EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Goliath grouper may not be harvested or possessed in or from the Gulf EEZ.

(iii) Red drum and Nassau grouper may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

(3) *Mid-Atlantic*. Red drum may not be harvested or possessed in or from the Mid-Atlantic EEZ south of a line extending in a direction of 115° from true north commencing at a point at 40°29.6′ N. lat., 73°54.1′ W. long., such point being the intersection of the New Jersey/New York boundary with the 3-nm line denoting the seaward limit of state waters. Red drum caught in such portion of the Mid-Atlantic EEZ must be released immediately with a minimum of harm.

(4) *South Atlantic*. (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the South Atlantic EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Goliath grouper and Nassau grouper may not be harvested or possessed in or from the South Atlantic EEZ. Goliath grouper and Nassau grouper taken in the South Atlantic EEZ incidentally by hook-and-line must be released immediately by cutting the line without removing the fish from the water.

(iii) Red drum may not be harvested or possessed in or from the South Atlantic EEZ. Red drum caught in the South Atlantic EEZ must be released immediately with a minimum of harm.

(iv) Wild live rock may not be harvested or possessed in the South Atlantic EEZ.

(v) It is intended that no female golden crabs in or from the South Atlantic EEZ be retained on board a vessel and that any female golden crab in or from the South Atlantic EEZ be released in

a manner that will ensure maximum probability of survival. However, to accommodate legitimate incidental catch and retention, the number of female golden crabs in or from the South Atlantic EEZ retained on board a vessel may not exceed 0.5 percent, by number, of all golden crabs on board. See § 622.45(f)(1) regarding the prohibition of sale of female golden crabs.

(vi) South Atlantic snapper-grouper may not be possessed in whole, gutted, or filleted form by a person aboard a vessel fishing for or possessing golden crab in or from the South Atlantic EEZ or possessing a golden crab trap in the South Atlantic. Only the head, fins, and backbone (collectively the ''rack'') of South Atlantic snapper-grouper may be possessed for use as bait.

(c) *Limited-harvest species*. A person who fishes in the EEZ may not combine a harvest limitation specified in this paragraph (c) with a harvest limitation applicable to state waters. A species subject to a harvest limitation specified in this paragraph (c) taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(1) *Cobia*. No person may possess more than two cobia per day in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

(2) *Cubera snapper*. No person may harvest more than two cubera snapper measuring 30 inches (76.2 cm), TL, or larger, per day in the South Atlantic EEZ off Florida and no more than two such cubera snapper in or from the South Atlantic EEZ off Florida may be possessed on board a vessel at any time.

(3) *Speckled hind and warsaw grouper*. The possession of speckled hind and warsaw grouper in or from the South Atlantic EEZ is limited to one of each per vessel per trip.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 62 FR 13988, Mar. 25, 1997; 63 FR 10567, Mar. 4, 1998; 70 FR 62081, Oct. 28, 2005]

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures*. In addition to the other restrictions specified in this paragraph (a), fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the closed areas specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) *Mutton snapper spawning aggregation area*. From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	17°37.8′	64°53.0′
B	17°39.0′	64°53.0′
C	17°39.0′	64°50.5′
D	17°38.1′	64°50.5′
E	17°37.8′	64°52.5′
A	17°37.8′	64°53.0′

(2) *Red hind spawning aggregation areas*. From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed.

(i) East of St. Croix.

Point	North lat.	West long.
A	17°50.2′	64°27.9′
B	17°50.1′	64°26.1′
C	17°49.2′	64°25.8′
D	17°48.6′	64°25.8′
E	17°48.1′	64°26.1′
F	17°47.5′	64°26.9′
A	17°50.2′	64°27.9′

(ii) *West of Puerto Rico*—(A) Bajo de Cico.

Point	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.4′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.47

(B) *Tourmaline Bank*.

Point	North lat.	West long.
A	18°11.2′	67°22.4′
B	18°11.2′	67°19.2′
C	18°08.2′	67°19.2′
D	18°08.2′	67°22.4′
A	18°11.2′	67°22.4′

(C) *Abrir La Sierra Bank*.

Point	North lat.	West long.
A	18°06.5′	67°26.9′
B	18°06.5′	67°23.9′
C	18°03.5′	67°23.9′

Point	North lat.	West long.
D	18°03.5′	67°26.9′
A	18°06.5′	67°26.9′

(3) *Grammanik Bank closed area.* (i) The Grammanik Bank closed area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°11.898′	64°56.328′
B	18°11.645′	64°56.225′
C	18°11.058′	64°57.810′
D	18°11.311′	64°57.913′
A	18°11.898′	64°56.328′

(ii) From February 1 through April 30, each year, no person may fish for or possess any species of fish, except highly migratory species, in or from the Grammanik Bank closed area. This prohibition on possession does not apply to such fish harvested and landed ashore prior to the closure. For the purpose of paragraph (a)(4) of this section, ''fish'' means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. ''Highly migratory species'' means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to part 635 of this title); and white marlin, blue marlin, sailfish, and longbill spearfish.

(4) *Red, black, tiger, yellowfin, or yellowedge grouper.* From February 1 through April 30, each year, no person may fish for or possess red, black, tiger, yellowfin, or yellowedge grouper in or from the Caribbean EEZ. This prohibition on possession does not apply to such grouper harvested and landed ashore prior to the closure.

(5) *Additional red hind closure.* From December 1 through the last day of February, each year, no person may fish for or possess red hind in or from the Caribbean EEZ west of 67°10′ W. longitude. This prohibition on possession does not apply to red hind harvested and landed ashore prior to the closure.

(6) *Vermilion, black, silk, or blackfin snapper.* From October 1 through December 31, each year, no person may fish for or possess vermilion, black, silk, or blackfin snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(7) *Lane or mutton snapper.* From April 1 through June 30, each year, no person may fish for or possess lane or mutton snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(b) *Year-round area closures*—(1) *Hind Bank Marine Conservation District (MCD).* The following activities are prohibited within the Hind Bank MCD: Fishing for any species, and anchoring by fishing vessels. The Hind Bank MCD is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	18°13.2′	65°06.0′
B	18°13.2′	64°59.0′
C	18°11.8′	64°59.0′
D	18°10.7′	65°06.0′
A	18°13.2′	65°06.0′

(2) [Reserved]

[64 FR 60133, Nov. 4, 1999, as amended at 70 FR 62081, Oct. 28, 2005]

§ 622.34 Gulf EEZ seasonal and/or area closures.

(a) *Alabama SMZ.* The Alabama SMZ consists of artificial reefs and surrounding areas. In the Alabama SMZ, fishing by a vessel that is operating as a charter vessel or headboat, a vessel that does not have a commercial permit for Gulf reef fish, as required under § 622.4(a)(2), or a vessel with such a permit fishing for Gulf reef fish is limited to hook-and-line gear with three or fewer hooks per line and spearfishing gear. A person aboard a vessel that uses on any trip gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear in the Alabama SMZ is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The Alabama SMZ is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	30°02.5′	88°07.7′
B	30°02.6′	87°59.3′

Point	North lat.	West long.
C	29°55.0′	87°55.5′
D	29°54.5′	88°07.5′
A	30°02.5′	88°07.7′

(b) *Florida middle grounds HAPC*. Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited year round in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°42.5′	84°24.8′
B	28°42.5′	84°16.3′
C	28°11.0′	84°00.0′
D	28°11.0′	84°07.0′
E	28°26.6′	84°24.8′
A	28°42.5′	84°24.8′

(c) *Reef fish longline and buoy gear restricted area*. A person aboard a vessel that uses, on any trip, longline or buoy gear in the longline and buoy gear restricted area is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b)(1) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b)(1), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The longline and buoy gear restricted area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 1, in Appendix B of this part.

(d) *Tortugas marine reserves HAPC*. The following activities are prohibited within the Tortugas marine reserves HAPC: Fishing for any species and bottom anchoring by fishing vessels.

(1) *EEZ portion of Tortugas North*. The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida′s waters, as shown on the current edition of NOAA chart 11434, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

(2) *Tortugas South*. The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00″	83°09′00″
B	24°33′00″	83°05′00″
C	24°18′00″	83°05′00″
D	24°18′00″	83°09′00″
A	24°33′00″	83°09′00″

(e) *Shrimp/stone crab separation zones*. Five zones are established in the Gulf EEZ and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. Although Zone II is entirely within Florida's waters, it is included in this paragraph (e) for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph (e) are as follows:

Point	North lat.	West long.
A	28°59′30″	82°45′36″
B	28°59′30″	83°00′10″
C	28°26′01″	82°59′47″
D	28°26′01″	82°56′54″
E	28°41′39″	82°55′25″
F	28°41′39″	82°56′09″
G	28°48′56″	82°56′19″
H	28°53′51″	82°51′19″
I[1]	28°54′43″	82°44′52″
J[2]	28°51′09″	82°44′00″
K	28°50′59″	82°54′16″
L	28°41′39″	82°53′56″
M[3]	28°41′39″	82°38′46″
N	28°41′39″	82°53′12″
O	28°30′51″	82°55′11″
P	28°40′00″	82°53′08″
Q	28°40′00″	82°47′58″
R	28°35′14″	82°47′47″
S	28°30′51″	82°52′55″
T	28°27′46″	82°55′09″
U	28°30′51″	82°52′09″

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(1) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ from October 5 through May 20, each year.

(2) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(3) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ from October 5 through May 20, each year.

(4) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(i) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ from October 5 through December 1 and from April 2 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone IV that is in the EEZ from December 2 through April 1, each year.

(5) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(i) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ from October 5 through November 30 and from March 16 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone V that is in the EEZ from December 1 through March 15, each year.

(f) *Southwest Florida seasonal trawl closure*. From January 1 to 1 hour after official sunset on May 20, each year, trawling, including trawling for live bait, is prohibited in that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
B[1]	26°16.0′	81°58.5′
C	26°00.0′	82°04.0′
D	25°09.0′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

(g) *Reef fish stressed area*. The stressed area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 2, in Appendix B of this part.

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area. The provisions of this paragraph do not apply to the following species: dwarf sand perch, hogfish, and sand perch.

(2) A roller trawl may not be used in the stressed area. Roller trawl means a trawl net equipped with a series of large, solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, that is, in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

(h) *Texas closure*. (1) From 30 minutes after official sunset on May 15 to 30 minutes after official sunset on July 15, trawling, except trawling for royal red shrimp beyond the 100-fathom (183-m) depth contour, is prohibited in the Gulf EEZ off Texas.

(2) In accordance with the procedures and restrictions of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the RA may adjust the closing and/or opening date of the Texas closure to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days. Notification of the adjustment of the closing or opening date will be published in the FEDERAL REGISTER.

(i) *Tortugas shrimp sanctuary*. (1) The Tortugas shrimp sanctuary is closed to trawling. The Tortugas shrimp sanctuary is that part of the EEZ off Florida shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
N[1]	25°52.9′	81°37.9′
F	24°50.7′	81°51.3′
G[2]	24°40.1′	82°26.7′
H[3]	24°34.7′	82°35.2′
P[4]	24°35.0′	82°08.0′

[1] Coon Key Light.
[2] New Ground Rocks Light.
[3] Rebecca Shoal Light.
[4] Marquessas Keys.

(2) The provisions of paragraph (i)(1) of this section notwithstanding—

(i) Effective from April 11 through September 30, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point T at 24°47.8′ N. lat., 82°01.0′ W. long. to point U at 24°43.83′ N. lat., 82°01.0′ W. long. (on the line denoting the seaward limit of Florida's waters);

thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55′ N. lat., 82°15.0′ W. long.; thence north to point W at 24°43.6′ N. lat., 82°15.0′ W. long.

(ii) Effective from April 11 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point W to point V, both points as specified in paragraph (i)(2)(i) of this section, to point G, as specified in paragraph (i)(1) of this section.

(iii) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point F, as specified in paragraph (i)(1) of this section, to point Q at 24°46.7′ N. lat., 81°52.2′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (i)(2)(i) of this section.

(j) *West and East Flower Garden Banks HAPC*. The following activities are prohibited year-round in the HAPC: Fishing with a bottom longline, bottom trawl, buoy gear, dredge, pot, or trap and bottom anchoring by fishing vessels.

(1) *West Flower Garden Bank*. West Flower Garden Bank is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°55′22.8″	93°53′09.6″
B	27°55′22.8″	93°46′46.0″
C	27°49′03.0″	93°46′46.0″
D	27°49′03.0″	93°53′09.6″
A	27°55′22.8″	93°53′09.6″

(2) *East Flower Garden Bank*. East Flower Garden Bank is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°59′14.4″	93°38′58.2″
B	27°59′14.4″	93°34′03.5″
C	27°52′36.5″	93°34′03.5″
D	27°52′36.5″	93°38′58.2″
A	27°59′14.4″	93°38′58.2″

(k) *Closure provisions applicable to the Madison and Swanson sites and Steamboat Lumps*. (1)(i) The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17′	85°50′
B	29°17′	85°38′
C	29°06′	85°38′
D	29°06′	85°50′
A	29°17′	85°50′

(ii) Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14′	84°48′
B	28°14′	84°37′
C	28°03′	84°37′
D	28°03′	84°48′
A	28°14′	84°48′

(iii) The provisions of paragraphs (k)(2) through (6) of this section apply within the Madison and Swanson sites and Steamboat Lumps through June 16, 2010.

(2) Possession of Gulf reef fish is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section.

(3) During November through April, all fishing is prohibited, and possession of any fish species is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section. The provisions of this paragraph, (k)(3), do not apply to highly migratory species.

(4) For the purpose of paragraph (k) of this section, transit means non-stop progression through the area; fishing gear appropriately stowed means -

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(iii) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(iv) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (i.e., hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(5) During May through October, surface trolling is the only allowable fishing activity. For the purpose of this paragraph (k)(5), surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(6) For the purpose of paragraph (k) of this section, fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*).

(l) *Closures of the Gulf shrimp fishery to reduce red snapper bycatch.* During a closure implemented in accordance with this paragraph (l), trawling is prohibited within the specified closed area(s).

(1) *Procedure for determining need for and extent of closures.* Each year, in accordance with the applicable framework procedure established in the FMP for the Shrimp Fishery in the Gulf of Mexico (FMP), the RA will, if necessary, establish a seasonal area closure for the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (l)(2) through (l)(4) of this section. The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 74–percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP. The framework procedure provides for adjustment of this target reduction level, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. The assessment will use shrimp effort data for the most recent 12-month period available and will include a recommendation regarding the geographical scope and duration of the closure. The Southeast Fisheries Science Center's assessment will be provided to the RA on or about March 1 of each year. If the RA determines that a closure is necessary, the closure falls within the scope of the potential closures evaluated in the FMP, and good cause exists to waive notice and comment, NMFS will implement the closure by publication of a final rule in the FEDERAL REGISTER. If such good cause waiver is not justified, NMFS will implement the closure via appropriate notice and comment rulemaking. NMFS intends that any closure implemented consistent with this paragraph (l) will begin on the same date and time as the Texas closure unless circumstances dictate otherwise.

(2) *Eastern zone.* The eastern zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°14′	88°57′
B	29°24′	88°34′
C	29°34′	87°38′
D	30°04′	87°00′
E	30°04′	88°41′
F	29°36′	88°37′
G	29°21′	88°59′
A	29°14′	88°57′

(3) *Louisiana zone.* The Louisiana zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	29°09.25′	92°36′
C	28°35′	90°44′
D	29°09′	89°48′
E	28°57′	89°34′
F	28°40′	90°09′
G	28°18′	90°33′
H	28°25′	91°37′
I	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(4) *Texas zone*. The Texas zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	28°44′	95°15′
C	28°11′	96°17′
D	27°44′	96°53′
E	27°02′	97°11′
F	26°00.5′	96°57.3′
G	26°00.5′	96°35.85′
H	26°24′	96°36′
I	26°49′	96°52′
J	27°12′	96°51′
K	27°39′	96°33′
L	27°55′	96°04′
M	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(m) *Closures of the recreational fishery for red snapper*. The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through May 31 and from October 1 through December 31, each year. During a closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(n) [Reserved]

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper*. From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of where harvested. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

(p) *Closures of the Gulf group king mackerel gillnet fishery*. The gillnet fishery for Gulf group king mackerel in or from the Gulf EEZ is closed each fishing year from July 1 until 6:00 a.m. on the day after the Martin Luther King Jr. Federal holiday. The gillnet fishery also is closed during all subsequent weekends and observed Federal holidays, except for the first weekend following the Martin Luther King Jr. holiday which will remain open to the gillnet fishery provided a notification of closure of that fishery has not been filed under § 622.43(a). Weekend closures are effective from 6:00 a.m. Saturday to 6:00 a.m. Monday. Holiday closures are effective from 6:00 a.m. on the observed Federal holiday to 6:00 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the southern Florida west coast subzone may not fish for or possess Gulf group king mackerel.

(q) [Reserved]

(r) *Pulley Ridge HAPC*. Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the area of the HAPC bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°58′18″	83°38′33″
B	24°58′18″	83°37′00″
C	24°41′11″	83°37′00″
D	24°40′00″	83°41′22″
E	24°43′55″	83°47′15″
A	24°58′18″	83°38′33″

(s) *Stetson Bank HAPC*. Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the HAPC, which is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°10′38.3″	94°18′36.5″
B	28°10′38.3″	94°17′06.3″
C	28°09′18.6″	94°17′06.3″
D	28°09′18.6″	94°18′36.5″
A	28°10′38.3″	94°18′36.5″

(t) *McGrail Bank HAPC*. Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the HAPC, which is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°59′06.0″	92°37′19.2″
B	27°59′06.0″	92°32′17.4″
C	27°55′55.5″	92°32′17.4″
D	27°55′55.5″	92°37′19.2″
A	27°59′06.0″	92°37′19.2″

(u) *Seasonal closure of the recreational fishery for gag, red grouper, and black grouper*. The recreational fishery for gag, red grouper, and black grouper in or from the Gulf EEZ is closed from February 15 to March 15, each year.

During the closure, the bag and possession limit for gag, red grouper, and black grouper in or from the Gulf EEZ is zero.

[61 FR 34934, July 3, 1996, as amended at 61 FR 48642, Sept. 16, 1996; 62 FR 46679, Sept. 4, 1997; 62 FR 47767, Sept. 11, 1997; 62 FR 67722, Dec. 30, 1997; 64 FR 47713, Sept. 1, 1999; 64 FR 57404, Oct. 25, 1999; 64 FR 59126, Nov. 2, 1999; 65 FR 30363, May 11, 2000; 65 FR 31830, May 19, 2000; 65 FR 50162, Aug. 17, 2000; 67 FR 47468, July 19, 2002; 69 FR 24535, May 4, 2004; 70 FR 33389, June 8, 2005; 70 FR 76219, Dec. 23, 2005; 71 FR 45435, Aug. 9, 2006; 71 FR 66880, Nov. 17, 2006; 71 FR 67462, Nov. 22, 2006; 73 FR 411, Jan. 3, 2008; 73 FR 5127, Jan. 29, 2008]

§ 622.35 Atlantic EEZ seasonal and/or area closures.

(a) *Allowable octocoral closed area.* No person may harvest or possess allowable octocoral in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL).

(b) *Longline closed areas.* A longline may not be used to fish in the EEZ for South Atlantic snapper-grouper south of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL); or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location. A person aboard a vessel with a longline on board that fishes on a trip in the South Atlantic EEZ south of 27°10′ N. lat., or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in § 622.39(d)(1), and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(c) *Oculina Bank*—(1) *HAPC.* The Oculina Bank HAPC encompasses an area bounded on the north by 28°30′ N. lat., on the south by 27°30′ N. lat., on the east by the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°00′ W. long.; and two adjacent areas: the first bounded on the north by 28°30′ N. lat., on the south by 28°29′ N. lat., on the east by 80°00′ W. long., and on the west by 80°03′ W. long.; and the second bounded on the north by 28°17′ N. lat., on the south by 28°16′ N. lat., on the east by 80°00′ W. long., and on the west by 80°03′ W. long. In the Oculina Bank HAPC, no person may:

(i) Use a bottom longline, bottom trawl, dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for rock shrimp or possess rock shrimp in or from the area on board a fishing vessel.

(2) *Experimental closed area.* Within the Oculina Bank HAPC, the experimental closed area is bounded on the north by 27°53′ N. lat., on the south by 27°30′ N. lat., on the east by 79°56′ W. long., and on the west by 80°00′ W. long. No person may fish for South Atlantic snapper-grouper in the experimental closed area, and no person may retain South Atlantic snapper-grouper in or from the area. In the experimental closed area, any South Atlantic snapper-grouper taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(d) *South Atlantic shrimp cold weather closure.* (1) Pursuant to the procedures and criteria established in the FMP for the Shrimp Fishery of the South Atlantic Region, when Florida, Georgia, North Carolina, or South Carolina closes all or a portion of its waters of the South Atlantic to the harvest of brown, pink, and white shrimp, the Assistant Administrator may concurrently close the South Atlantic EEZ adjacent to the closed state waters by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the ending date of the closure in state waters, but may be ended earlier based on the state's request. In the latter case, the Assistant Administrator will terminate a closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

(2) During a closure, as specified in paragraph (d)(1) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ (closed area); and no person may possess on board a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from a closed area, except as authorized in paragraph (d)(2)(iii) of this section.

(ii) No person aboard a vessel trawling in that part of a closed area that is within 25 nm of the baseline from which the territorial sea is measured may use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through a closed area.

(e) *SMZs*. (1) The SMZs consist of artificial reefs and surrounding areas as follows:

(i) *Paradise Reef* is bounded on the north by 33°31.59′ N. lat.; on the south by 33°30.51′ N. lat.; on the east by 78°57.55′ W. long.; and on the west by 78°58.85′ W. long.

(ii) *Ten Mile Reef* is bounded on the north by 33°26.65′ N. lat.; on the south by 33°24.80′ N. lat.; on the east by 78°51.08′ W. long.; and on the west by 78°52.97′ W. long.

(iii) *Pawleys Island Reef* is bounded on the north by 33°26.58′ N. lat.; on the south by 33°25.76′ N. lat.; on the east by 79°00.29′ W. long.; and on the west by 79°01.24′ W. long.

(iv) *Georgetown Reef* is bounded on the north by 33°14.90′ N. lat.; on the south by 33°13.85′ N. lat.; on the east by 78°59.45′ W. long.; and on the west by 79°00.65′ W. long.

(v) *Capers Reef* is bounded on the north by 32°45.45′ N. lat.; on the south by 32°43.91′ N. lat.; on the east by 79°33.81′ W. long.; and on the west by 79°35.10′ W. long.

(vi) *Kiawah Reef* is bounded on the north by 32°29.78′ N. lat.; on the south by 32°28.25′ N. lat.; on the east by 79°59.00′ W. long.; and on the west by 80°00.95′ W. long.

(vii) *Edisto Offshore Reef* is bounded on the north by 32°15.30′ N. lat.; on the south by 32°13.90′ N. lat.; on the east by 79°50.25′ W. long.; and on the west by 79°51.45′ W. long.

(viii) *Hunting Island Reef* is bounded on the north by 32°13.72′ N. lat.; on the south by 32°12.30′ N. lat.; on the east by 80°19.23′ W. long.; and on the west by 80°21.00′ W. long.

(ix) *Fripp Island Reef* is bounded on the north by 32°15.92′ N. lat.; on the south by 32°14.75′ N. lat.; on the east by 80°21.62′ W. long.; and on the west by 80°22.90′ W. long.

(x) *Betsy Ross Reef* is bounded on the north by 32°03.60′ N. lat.; on the south by 32°02.88′ N. lat.; on the east by 80°24.57′ W. long.; and on the west by 80°25.50′ W. long.

(xi) *Hilton Head Reef/Artificial Reef—T* is bounded on the north by 32°00.71′ N. lat.; on the south by 31°59.42′ N. lat.; on the east by 80°35.23′ W. long.; and on the west by 80°36.37′ W. long.

(xii) *Artificial Reef—A* is bounded on the north by 30°57.4′ N. lat.; on the south by 30°55.4′ N. lat.; on the east by 81°13.9′ W. long.; and on the west by 81°16.3′ W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°52.0′ N. lat.; on the south by 30°50.0′ N. lat.; on the east by 81°08.5′ W. long.; and on the west by 81°10.9′ W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 31°00.0′ N. lat.; on the south by 30°58.0′ N. lat.; on the east by 80°56.8′ W. long.; and on the west by 80°59.2′ W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.8′ N. lat.; on the south by 31°04.8′ N. lat.; on the east by 81°10.5′ W. long.; and on the west by 81°13.4′ W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7′ N. lat.; on the south by 31°34.7′ N. lat.; on the east by 80°47.3′ W. long.; and on the west by 80°50.1′ W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.0′ N. lat.; on the south by 31°44.0′ N. lat.; on the east by

80°34.7′ W. long.; and on the west by 80°37.1′ W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2′ N. lat.; on the south by 31°49.2′ N. lat.; on the east by 80°45.3′ W. long.; and on the west by 80°47.7′ W. long.

(xix) *Ft. Pierce Inshore Reef* is bounded on the north by 27°26.8′ N. lat.; on the south by 27°25.8′ N. lat.; on the east by 80°09.24′ W. long.; and on the west by 80°10.36′ W. long.

(xx) *Ft. Pierce Offshore Reef* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°23.68′	80°03.95′
B	27°22.80′	80°03.60′
C	27°23.94′	80°00.02′
D	27°24.85′	80°00.33′
A	27°23.68′	80°03.95′

(xxi) *Key Biscayne/Artificial Reef—H* is bounded on the north by 25°42.82′ N. lat.; on the south by 25°41.32′ N. lat.; on the east by 80°04.22′ W. long.; and on the west by 80°05.53′ W. long.

(xxii) *Little River Offshore Reef* is bounded on the north by 33°42.10′ N. lat.; on the south by 33°41.10′ N. lat.; on the east by 78°26.40′ W. long.; and on the west by 78°27.10′ W. long.

(xxiii) *BP–25 Reef* is bounded on the north by 33°21.70′ N. lat.; on the south by 33°20.70′ N. lat.; on the east by 78°24.80′ W. long.; and on the west by 78°25.60′ W. long.

(xxiv) *Vermilion Reef* is bounded on the north by 32°57.80′ N. lat.; on the south by 32°57.30′ N. lat.; on the east by 78°39.30′ W. long.; and on the west by 78°40.10′ W. long.

(xxv) *Cape Romaine Reef* is bounded on the north by 33°00.00′ N. lat.; on the south by 32°59.50′ N. lat.; on the east by 79°02.01′ W. long.; and on the west by 79°02.62′ W. long.

(xxvi) *Y–73 Reef* is bounded on the north by 32°33.20′ N. lat.; on the south by 32°32.70′ N. lat.; on the east by 79°19.10′ W. long.; and on the west by 79°19.70′ W. long.

(xxvii) *Eagles Nest Reef* is bounded on the north by 32°01.48′ N. lat.; on the south by 32°00.98′ N. lat.; on the east by 80°30.00′ W. long.; and on the west by 80°30.65′ W. long.

(xxviii) *Bill Perry Jr. Reef* is bounded on the north by 33°26.20′ N. lat.; on the south by 33°25.20′ N. lat.; on the east by 78°32.70′ W. long.; and on the west by 78°33.80′ W. long.

(xxix) *Comanche Reef* is bounded on the north by 32°27.40′ N. lat.; on the south by 32°26.90′ N. lat.; on the east by 79°18.80′ W. long.; and on the west by 79°19.60′ W. long.

(xxx) *Murrel's Inlet 60 Foot Reef* is bounded on the north by 33°17.50′ N. lat.; on the south by 33°16.50′ N. lat.; on the east by 78°44.67′ W. long.; and on the west by 78°45.98′ W. long.

(xxxi) *Georgetown 95 Foot Reef* is bounded on the north by 33°11.75′ N. lat.; on the south by 33°10.75′ N. lat.; on the east by 78°24.10′ W. long.; and on the west by 78°25.63′ W. long.

(xxxii) *New Georgetown 60 Foot Reef* is bounded on the north by 33°09.25′ N. lat.; on the south by 33°07.75′ N. lat.; on the east by 78°49.95′ W. long.; and on the west by 78°51.45′ W. long.

(xxxiii) *North Inlet 45 Foot Reef* is bounded on the north by 33°21.03′ N. lat.; on the south by 33°20.03′ N. lat.; on the east by 79°00.31′ W. long.; and on the west by 79°01.51′ W. long.

(xxxiv) *CJ Davidson Reef* is bounded on the north by 33°06.48′ N. lat.; on the south by 33°05.48′ N. lat.; on the east by 79°00.27′ W. long.; and on the west by 79°01.39′ W. long.

(xxxv) *Greenville Reef* is bounded on the north by 32°57.25′ N. lat.; on the south by 32°56.25′ N. lat.; on the east by 78°54.25′ W. long.; and on the west by 78°55.25′ W. long.

(xxxvi) *Charleston 60 Foot Reef* is bounded on the north by 32°33.60′ N. lat.; on the south by 32°32.60′ N. lat.; on the east by 79°39.70′ W. long.; and on the west by 79°40.90′ W. long.

(xxxvii) *Edisto 60 Foot Reef* is bounded on the north by 32°21.75′ N. lat.; on the south by 32°20.75′ N. lat.; on the east by 80°04.10′ W. longitude; and on the west by 80°05.70′ W. long.

(xxxviii) *Edisto 40 Foot Reef* is bounded on the north by 32°25.78′ N. lat.; on the south by 32°24.78′ N. lat.; on the east by 80°11.24′ W. long.; and on the west by 80°12.32′ W. long.

(xxxix) *Beaufort 45 Foot Reef* is bounded on the north by 32°07.65′ N. lat.; on the south by 32°06.65′ N. lat.; on the east by 80°28.80′ W. long.; and on the west by 80°29.80′ W. long.

(xl) *Artificial Reef—ALT* is bounded on the north by 31°18.6′ N. lat.; on the south by 31°16.6′ N. lat.; on the east by 81°07.0′ W. long.; and on the west by 81°09.4′ W. long.

(xli) *Artificial Reef—CAT* is bounded on the north by 31°40.2′ N. lat.; on the south by 31°38.2′ N. lat.; on the east by 80°56.2′ W. long.; and on the west by 80°58.6′ W. long.

(xlii) *Artificial Reef—CCA* is bounded on the north by 31°43.7′ N. lat.; on the south by 31°41.7′ N. lat.; on the east by 80°40.0′ W. long.; and on the west by 80°42.3′ W. long.

(xliii) *Artificial Reef—DRH* is bounded on the north by 31°18.0′ N. lat.; on the south by 31°16.0′ N. lat.; on the east by 80°56.6′ W. long.; and on the west by 80°59.0′ W. long.

(xliv) *Artificial Reef—DUA* is bounded on the north by 31°47.8′ N. lat.; on the south by 31°45.8′ N. lat.; on the east by 80°52.1′ W. long.; and on the west by 80°54.5′ W. long.

(xlv) *Artificial Reef—DW* is bounded on the north by 31°22.8′ N. lat.; on the south by 31°20.3′ N. lat.; on the east by 79°49.8′ W. long.; and on the west by 79°51.1′ W. long.

(xlvi) *Artificial Reef—KBY* is bounded on the north by 30°48.6′ N. lat.; on the south by 30°46.6′ N. lat.; on the east by 81°15.0′ W. long.; and on the west by 81°17.4′ W. long.

(xlvii) *Artificial Reef—KTK* is bounded on the north by 31°31.3′ N. lat.; on the south by 31°29.3′ N. lat.; on the east by 80°59.1′ W. long.; and on the west by 81°01.5′ W. long.

(xlviii) *Artificial Reef—MRY* is bounded on the north by 30°47.5′ N. lat.; on the south by 30°45.5′ N. lat.; on the east by 81°05.5′ W. long.; and on the west by 81°07.8′ W. long.

(xlix) *Artificial Reef—SAV* is bounded on the north by 31°55.4′ N. lat.; on the south by 31°53.4′ N. lat.; on the east by 80°45.2′ W. long.; and on the west by 80°47.6′ W. long.

(l) *Artificial Reef—SFC* is bounded on the north by 31°00.8′ N. lat.; on the south by 30°59.8′ N. lat.; on the east by 81°02.2′ W. long.; and on the west by 81°03.4′ W. long.

(li) *Artificial Reef—WW* is bounded on the north by 31°43.5′ N. lat.; on the south by 31°42.2′ N. lat.; on the east by 79°57.7′ W. long.; and on the west by 79°59.3′ W. long.

(2) To determine what restrictions apply in the SMZs listed in § 622.35(e)(1), follow this table:

IN SMZs SPECIFIED IN THE FOLLOWING PARAGRAPHS OF § 622.35	THESE RESTRICTIONS APPLY
(e)(1)(i) through (x), (e)(1)(xx), and (e)(1)(xxii) through (xxxix)	Use of a powerhead to take South Atlantic snapper-grouper is prohibited. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in, or after having fished in, one of these SMZs constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ.
(e)(1)(i) through (xviii) and (e)(1)(xxii) through (li)	Fishing may only be conducted with handline, rod and reel, and spearfishing gear.
(e)(1)(i) through (li)	Use of a sea bass pot or bottom longline is prohibited.
(e)(1)(xii) through (xviii) and (e)(1)(xl) through (li)	Possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.39(d)(1).
(e)(1)(xix) and (e)(1)(xx)	A hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.
(e)(1)(xix) and (e)(1)(xxi)	Use of spearfishing gear is prohibited.

(f) *Golden crab trap closed areas*. In the golden crab northern zone, a golden crab trap may not be deployed in waters less than 900 ft (274 m) deep. In the golden crab middle and southern zones, a golden crab trap may not be deployed in waters less than 700 ft (213 m) deep. See § 622.17(b) for specification of the golden crab zones.

(g) *Pelagic sargassum area and seasonal restrictions*—(1) *Area limitations*. (i) No person may harvest pelagic sargassum in the South Atlantic EEZ between 36°34′55″ N. lat. (directly east from the Virginia/North Carolina boundary) and 34° N. lat., within 100 nautical miles east of the North Carolina coast.

(ii) No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ south of 34° N. lat.

(2) *Seasonal limitation*. No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ during the months of July through October. This prohibition on possession does not apply to pelagic sargassum that was harvested and landed ashore prior to the closed period.

(h) *Dolphin/wahoo closed areas*. (1) If pelagic longline gear is on board a vessel, a person aboard such vessel may not fish for or retain a dolphin or wahoo—

(i) In the Northeastern United States closed area from June 1 through June 30 each year. The Northeastern United States closed area is that portion of the EEZ between 40° N. lat. and 39° N. lat. from 68° W. long. to 74° W. long.

(ii) In the Charleston Bump closed area from February 1 through April 30 each year. The Charleston Bump closed area is that portion of the EEZ off North Carolina, South Carolina, and Georgia between 34° N. lat. and 31° N. lat. and west of 76° W. long.

(iii) In the East Florida Coast closed area year round. The East Florida Coast closed area is that portion of the EEZ off Georgia and the east coast of Florida from the inner boundary of the EEZ at 31° N. lat.; thence due east to 78° W. long.; thence by a rhumb line to 28°17′ N. lat., 79°12′ W. long.; thence proceeding in a southerly direction along the outer boundary of the EEZ to 24° N. lat.; thence due west to 24° N. lat., 81°47′ W. long.; thence due north to the innermost boundary of the EEZ at 81°47′ W. long.

(2) A vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and gangions with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(3) If a vessel is in a closed area during a time specified in paragraph (h)(1) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 61 FR 47449, Sept. 9, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 63 FR 71794, Dec. 30, 1998; 65 FR 37295, June 14, 2000; 65 FR 61115, Oct. 16, 2000; 68 FR 57378, Oct. 3, 2003; 69 FR 30241, May 27, 2004]

§ 622.36 Seasonal harvest limitations.

(a) *Gulf EEZ*. During March, April, and May, each year, the possession of greater amberjack in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such greater amberjack were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(i) and (b)(2), respectively, and such greater amberjack are subject to the prohibition on sale or purchase of greater amberjack possessed under the bag limit, as specified in § 622.45(c)(1). Also note that if commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, are on board the vessel, no bag limit of Gulf reef fish may be possessed, as specified in § 622.39(a)(5).

(b) *South Atlantic EEZ*—(1) *Greater amberjack spawning season*. During April, each year, the possession of greater amberjack in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such greater amberjack are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(6).

(2) *Mutton snapper spawning season*. During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person per day or 10 per person per trip, whichever is more restrictive.

(3) *Wreckfish spawning-season closure*. From January 15 through April 15, each

year, no person may harvest or possess on a fishing vessel wreckfish in or from the EEZ; offload wreckfish from the EEZ; or sell or purchase wreckfish in or from the EEZ. The prohibition on sale or purchase of wreckfish does not apply to trade in wreckfish that were harvested, offloaded, and sold or purchased prior to January 15 and were held in cold storage by a dealer or processor.

(4) *Black grouper and gag*. During March and April, each year, the possession of black grouper and gag in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such black grouper or gag were harvested, is limited to two black grouper or gag, combined, per person per day or two black grouper or gag, combined, per person per trip, whichever is more restrictive. Such black grouper or gag are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

(5) *Red porgy*. During January, February, March, and April, the harvest or possession of red porgy in or from the South Atlantic EEZ is limited to three per person per day or three per person per trip, whichever is more restrictive. In addition, this limitation is applicable in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

[61 FR 34934, July 3, 1996, as amended at 62 FR 67723, Dec. 30, 1997; 64 FR 3627, Jan. 25, 1999; 65 FR 51252, Aug. 23, 2000; 71 FR 45435; Aug. 9, 2006; 71 FR 55106, Oct. 23, 2006]

§ 622.37 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (c)(3) of this section, a fish not in compliance with its size limit, as specified in this section, in or from the Caribbean, Gulf, South Atlantic, and/or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

(a) *Caribbean reef fish:* Yellowtail snapper—12 inches (30.5 cm), TL.

(b) *Caribbean spiny lobster*—3.5 inches (8.9 cm), carapace length.

(c) *Coastal migratory pelagic fish*. (1) Cobia in the Gulf, Mid-Atlantic, or South Atlantic—33 inches (83.8 cm), fork length.

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

(3) Spanish mackerel in the Gulf, South Atlantic, or Mid-Atlantic—12 inches (30.5 cm), fork length, except that a vessel fishing under a quota for Spanish mackerel specified in § 622.42(c)(2) may possess undersized Spanish mackerel in quantities not exceeding 5 percent, by weight, of the Spanish mackerel on board.

(d) *Gulf reef fish*—(1) *Snapper*. (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—10 inches (25.4 cm), TL.

(iii) Cubera, dog, gray, mahogany, and yellowtail snappers and schoolmaster—12 inches (30.5 cm), TL.

(iv) Red snapper -16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (b)(1)(iii) and 13 inches (33.0 cm), TL, for a fish taken by a person not subject to the bag limit.

(v) Mutton snapper—16 inches (40.6 cm), TL.

(2) *Grouper*. (i) Scamp—16 inches (40.6 cm), TL.

(ii) Red grouper and yellowfin grouper—20 inches (50.8 cm), TL.

(iii) Black grouper and gag—(A) For a person not subject to the bag limit specified in § 622.39(b)(1)(ii)—24 inches (61.0 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—22 inches (55.9 cm), TL.

(3) *Other Gulf reef fish species.* (i) Gray triggerfish—14 inches (35.6 cm), fork length.

(ii) Hogfish—12 inches (30.5 cm), fork length.

(iii) Banded rudderfish and lesser amberjack—14 inches (35.6 cm), fork length (minimum size); 22 inches (55.9 cm), fork length (maximum size).

(iv) Greater amberjack—30 inches (76 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(4) A person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, may not possess any Gulf reef fish that do not comply with the applicable commercial minimum size limit.

(e) *South Atlantic snapper-grouper*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—12 inches (30.5 cm), TL.

(iii) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers; and schoolmaster—12 inches (30.5 cm), TL.

(iv) Mutton snapper—16 inches (40.6 cm), TL.

(v) Red snapper—20 inches (50.8 cm), TL.

(2) *Grouper.* (i) Red, yellowfin, and yellowmouth grouper; and scamp—20 inches (50.8 cm), TL.

(ii) Black grouper and gag—24 inches (61.0 cm), TL.

(3) *Other snapper-grouper species.* (i) *Black sea bass.* (A) For a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(vii):

(*1*) Through May 31, 2007—11 inches (27.9 cm), TL; and

(*2*) On and after June 1, 2007—12 inches (30.5 cm), TL.

(B) For a fish taken by a person not subject to the bag limit in § 622.39(d)(1)—10 inches (25.4 cm), TL.

(ii) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(iii) Hogfish—12 inches (30.5 cm), fork length.

(iv) Red porgy—14 inches (35.6 cm), TL.

(v) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(f) *Gulf shrimp.* White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

(g) *Caribbean queen conch*—9 inches (22.9 cm) in length, that is, from the tip of the spire to the distal end of the shell, and ⅜ inch (9.5 mm) in lip width at its widest point. A queen conch with a length of at least 9 inches (22.9 cm) or a lip width of at least ⅜ inch (9.5 mm) is not undersized.

(h) *Dolphin in the Atlantic off Florida and off Georgia*—20 inches (50.8 cm), fork length.

[61 FR 34934, July 3, 1996, as amended at 61 FR 65483, Dec. 13, 1996; 62 FR 13988, Mar. 25, 1997; 63 FR 444, Jan. 6, 1998; 63 FR 10567, Mar. 4, 1998; 64 FR 3628, Jan. 25, 1999; 64 FR 45459, Aug. 20, 1999; 64 FR 57404, Oct. 25, 1999; 65 FR 31831, May 19, 2000; 65 FR 50162, Aug. 17, 2000; 69 FR 30242, May 27, 2004; 70 FR 33389, June 8, 2005; 71 FR 45435; Aug. 9, 2006; 71 FR 55107, Oct. 23, 2006; 73 FR 411, Jan. 3, 2008; 73 FR 5128, Jan. 29, 2008; 73 FR 11051, Feb. 29, 2008; 73 FR 38143, July 3, 2008]

§ 622.38 Landing fish intact.

The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(a) The following must be maintained with head and fins intact: cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; dolphin and wahoo in or from the Atlantic EEZ; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; finfish in or from the Caribbean EEZ, except as specified in paragraphs (c) and (d) of this section; and finfish in or from the

Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

(b) A Caribbean spiny lobster in or from the Caribbean EEZ must be maintained with head and carapace intact.

(c) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (a) of this section.

(d) In the Gulf EEZ or Caribbean EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact. See § 622.31(m) regarding a prohibition on the use of Gulf reef fish as bait.

(i) For the purpose of this paragraph (d)(1), ''bait'' means--

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in3 (7.6 cm3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (d)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ or Caribbean EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

(e) A golden crab in or from the South Atlantic EEZ must be maintained in whole condition through landing ashore. For the purposes of this paragraph, whole means a crab that is in its natural condition and that has not been gutted or separated into component pieces, e.g., clusters.

(f) Queen conch in or from the Caribbean EEZ must be maintained with meat and shell intact.

(g) Cut-off (damaged) king or Spanish mackerel that comply with the minimum size limits in § 622.37(c)(2) and (c)(3), respectively, and the trip limits in § 622.44(a) and (b), respectively, may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective trip limits. Such cut-off fish also may be sold. A maximum of five additional cut-off (damaged) king mackerel, not subject to the size limits or trip limits, may be possessed or offloaded ashore but may not be sold or purchased and are not counted against the trip limit.

(h) In the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ. For the purpose of this paragraph, a vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 61 FR 65483, Dec. 13, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 38303, July 16, 1998; 64 FR 3628, Jan. 25, 1999; 65 FR 16340, Mar. 28, 2000; 67 FR 22362, May 3, 2002; 69 FR 30242, May 27, 2004; 70 FR 62081, Oct. 28, 2005; 71 FR 45436, Aug. 9, 2006]

§ 622.39 Bag and possession limits.

(a) *Applicability*. (1) The bag and possession limits apply for species/species groups listed in this section in or from the EEZ. Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip. The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person aboard a vessel in the EEZ that has on board the commercial vessel permit required under § 622.4(a)(2) for the appropriate species/species group. However, see § 622.32 for limitations on taking prohibited and limited-harvest species.

The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits. The possession of a commercial vessel permit notwithstanding, the bag and possession limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in this section with a bag or possession limit applicable to state waters. A species/species group subject to a bag limit specified in this section taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ. The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in this section are not exceeded.

(2) Paragraph (a)(1) of this section notwithstanding, bag and possession limits also apply for Gulf reef fish in or from the EEZ to a person aboard a vessel that has on board a commercial permit for Gulf reef fish—

(i) When trawl gear or entangling net gear is on board. A vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(ii) When a longline or buoy gear is on board and the vessel is fishing or has fished on a trip in the reef fish longline and buoy gear restricted area specified in § 622.34(c). A vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

(iii) For a species/species group when its quota has been reached and closure has been effected, provided that no commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, are on board as specified in paragraph (a)(5) of this section.

(iv) When the vessel has on board or is tending any trap other than a stone crab trap or a spiny lobster trap.

(3) Paragraph (a)(1) of this section notwithstanding, the bag and other limits specified in § 622.35(b) apply for South Atlantic snapper-grouper in or from the EEZ to a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued that has on board a longline in the longline closed area.

(4) Paragraph (a)(1) of this section notwithstanding, a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued must comply with the bag limits specified in paragraph (d)(1) of this section for South Atlantic snapper-grouper taken with a powerhead, regardless of where taken, when such snapper-grouper are possessed in an SMZ specified in § 622.35(e)(1)(xii) through (e)(1)(xviii) or (e)(1)(xl) through (e)(1)(li).

(5) A person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, may not possess Gulf reef fish caught under a bag limit.

(b) *Gulf reef fish*—(1) *Bag limits.* (i) Greater amberjack—1. However, no greater amberjack may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper—5 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day or 1 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(iii) Red snapper—2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(iv) Snappers, combined, excluding red, lane, and vermilion snapper—10.

(v) Gulf reef fish, combined, excluding those specified in paragraphs

(b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch -20.

(vi) Banded rudderfish and lesser amberjack, combined—5.

(vii) Hogfish—5.

(2) *Possession limits*. A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(c) *King and Spanish mackerel*—(1) *Bag limits*. (i) Atlantic migratory group king mackerel—

(A) Mid-Atlantic and South Atlantic, other than off Florida—3.

(B) Off Florida—2, which is the daily bag limit specified by Florida for its waters (Rule 46–12.004(1), Florida Administrative Code). If Florida changes its limit, the bag limit specified in this paragraph (c)(1)(i)(B) will be changed to conform to Florida's limit, provided such limit does not exceed 5.

(ii) Gulf migratory group king mackerel—2.

(iii) Atlantic migratory group Spanish mackerel—15.

(iv) Gulf migratory group Spanish mackerel—15.

(2) *Possession limits*. A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *South Atlantic snapper-grouper*—(1) *Bag limits*. (i) Greater amberjack—1.

(ii) Groupers and tilefish, combined—5. However, within the 5-fish aggregate bag limit:

(A) No more than two fish may be gag or black grouper, combined;

(B) No more than one fish may be a snowy grouper;

(C) No more than one fish may be a golden tilefish; and

(D) No goliath grouper or Nassau grouper may be retained.

(iii) Hogfish in the South Atlantic off Florida—5.

(iv) Snappers, combined, excluding cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and excluding vermilion snapper—10, of which no more than 2 may be red snapper. (See § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(v) Vermilion snapper—10.

(vi) Red porgy—3.

(vii) Black sea bass—15.

(viii) South Atlantic snapper-grouper, combined, excluding tomtate and blue runner and those specified in paragraphs (d)(1)(i) through (vii) of this section—20.

(2) *Possession limits*. (i) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(A) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits of species other than red porgy.

(B) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits of species other than red porgy.

(ii) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of three per day or three per trip, whichever is more restrictive.

(3) *Longline bag limits*. Other provisions of this paragraph (d) notwithstanding, a person on a trip aboard a vessel for which the bag limits apply that has a longline on board is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in paragraph (d)(1) of this section, and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph (d)(3), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length

suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(e) *Caribbean queen conch*—(1) *Applicability*. Paragraph (a)(1) of this section notwithstanding, the bag limit of paragraph (e)(2) of this section does not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands. See § 622.44 for the commercial daily trip limit.

(2) *Bag limit*. The bag limit for queen conch in or from the Caribbean EEZ is 3 per person or, if more than 4 persons are aboard, 12 per boat.

(f) *Atlantic dolphin and wahoo*. Bag and possession limits are as follows:

(1) Dolphin—10, not to exceed 60 per vessel, whichever is less, except, on board a headboat, 10 per paying passenger.

(2) Wahoo—2.

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§ 622.40 Limitations on traps and pots.

(a) *Tending*—(1) *Caribbean EEZ*. A fish trap or Caribbean spiny lobster trap in the Caribbean EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap or spiny lobster trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(2) *South Atlantic EEZ*. A sea bass pot or golden crab trap in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted. For golden crab only, a vessel with written consent on board must also possess a valid commercial vessel permit for golden crab.

(b) *Escape mechanisms*—(1) *Caribbean EEZ*. (i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(ii) A spiny lobster trap used or possessed in the Caribbean EEZ must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding ⅛ inch (3.2 mm). This includes, but is not limited to tyre palm, hemp, jute, cotton, wool, or silk.

(B) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16 inch (1.6 mm), that is, 16 gauge wire.

(2) *South Atlantic EEZ*. (i) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have—

(A) On at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(*1*) Ungalvanized or uncoated iron wire with a diameter not exceeding 0.041 inches (1.0 mm), that is, 19 gauge wire.

(*2*) Galvanic timed-release mechanisms with a letter grade designation (degradability index) no higher than J.

(B) An unobstructed escape vent opening on at least two opposite vertical sides, excluding top and bottom. The minimum dimensions of an escape vent opening (based on inside measurement) are:

(*1*) 1⅛ by 5¾ inches (2.9 by 14.6 cm) for a rectangular vent.

(*2*) 1.75 by 1.75 inches (4.5 by 4.5 cm) for a square vent.

(*3*) 2.0-inch (5.1-cm) diameter for a round vent.

(ii) A golden crab trap that is used or possessed in the South Atlantic EEZ must have at least one escape gap or escape ring on each of two opposite vertical sides. The minimum allowable inside dimensions of an escape gap are 2.75 by 3.75 inches (7.0 by 9.5 cm); the minimum allowable inside diameter of an escape ring is 4.5 inches (11.4 cm). In addition to the escape gaps—

(A) A golden crab trap constructed of webbing must have an opening (slit) at least 1 ft (30.5 cm) long that may be closed (relaced) only with untreated cotton string no larger than 3⁄16 inch (0.48 cm) in diameter.

(B) A golden crab trap constructed of material other than webbing must have an escape panel or door measuring at least 11 7/8 by 11 7/8 inches (30.2 by 30.2 cm), located on at least one side, excluding top and bottom. The hinges or fasteners of such door or panel must be made of either ungalvanized or uncoated iron wire no larger than 19 gauge (0.04 inch (1.0 mm) in diameter) or untreated cotton string no larger than 3⁄16 inch (4.8 mm) in diameter.

(c) *Construction requirements and mesh sizes*—(1) *Caribbean EEZ*. A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ, must have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(2) *South Atlantic EEZ*. (i) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(A) For sides of the pot other than the back panel:

(*1*) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(*2*) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(*3*) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(B) For the entire back panel, *i.e.*, the side of the pot opposite the side that contains the pot entrance, mesh that is at least 2 inches (5.1 cm) between sides.

(ii) A golden crab trap deployed or possessed in the South Atlantic EEZ may not exceed 64 ft^3 (1.8 m^3) in volume in the northern zone or 48 ft^3 (1.4 m^3) in volume in the middle and southern zones. See § 622.17(b) for specification of the golden crab zones.

(d) *Area-specific restrictions*—(1) *South Atlantic EEZ*—(i) *Sea bass pots*. (A) In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a ''trawl'' or trot line.

(B) A sea bass pot must be removed from the water in the South Atlantic EEZ when the quota specified in § 622.42(e)(5) is reached. The RA may authorize a grace period of up to 10 days for removal of pots after a closure is in effect based on exigent circumstances which include, but are not limited to, insufficient advance notice

of a closure or severe weather. In addition, a person may request that the RA grant such a grace period based on severe personal hardship, such as equipment failure or the vessel operator's health, by providing a letter outlining the nature and circumstances of the severe personal hardship to be received by the RA no later than the effective date of the closure. The RA will advise the requester of the approval or disapproval of the request. After a closure is in effect, a black sea bass may not be retained by a vessel that has a sea bass pot on board.

(ii) *Golden crab traps*. Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap.

(2) [Reserved]

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 62 FR 13988, Mar. 25, 1997; 63 FR 10568, Mar. 4, 1998; 63 FR 38303, July 16, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 3628, Jan. 25, 1999; 67 FR 22362, May 3, 2002; 70 FR 62081, Oct. 28, 2005; 71 FR 55107, Oct. 23, 2006; 73 FR 411, Jan. 3, 2008]

§ 622.41 Species specific limitations.

(a) *Aquacultured live rock*. In the Gulf or South Atlantic EEZ:

(1) Aquacultured live rock may be harvested only under a permit, as required under § 622.4(a)(3)(iii), and aquacultured live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site. A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(2) The following restrictions apply to individual aquaculture activities:

(i) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(ii) Material deposited on the aquaculture site—

(A) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.

(B) Must be free of contaminants.

(C) Must be nontoxic.

(D) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely.

(E) Must be placed from a vessel that is anchored.

(F) In the Gulf EEZ, must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate.

(G) In the South Atlantic EEZ, must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

(iii) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(3) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand. In addition, the following activities are prohibited in the South Atlantic: Chipping of aquacultured live rock in the EEZ, possession of chipped aquacultured live rock in or from the EEZ, removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ, and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the definition of ''Allowable octocoral'' for clarification of the distinction between allowable octocoral and live rock. For the purposes of this paragraph (a)(3), chipping means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

(4) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344):

(b) *Caribbean reef fish anchoring restriction*. The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the Caribbean EEZ must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could

include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required.

(c) *Coastal migratory pelagic fish*—(1) *Authorized gear*. Subject to the prohibitions on gear/methods specified in § 622.31, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ in directed fisheries for coastal migratory pelagic fish:

(i) King mackerel, Atlantic migratory group—

(A) North of 34°37.3′ N. lat., the latitude of Cape Lookout Light, NC—all gear except drift gillnet and long gillnet.

(B) South of 34°37.3′ N. lat.—automatic reel, bandit gear, handline, and rod and reel.

(ii) King mackerel, Gulf migratory group—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.42(c)(1)(i)(A)(*3*) for a description of the southern Florida west coast subzone.)

(iii) Spanish mackerel, Atlantic migratory group—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

(iv) Spanish mackerel, Gulf migratory group—all gear except drift gillnet, long gillnet, and purse seine.

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ and little tunny in the South Atlantic EEZ south of 34°37.3′ N. lat.—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(vi) Cero in the South Atlantic EEZ and little tunny in the South Atlantic EEZ north of 34°37.3′ N. lat.—all gear except drift gillnet and long gillnet.

(vii) Bluefish, cero, cobia, dolphin, and little tunny in the Gulf EEZ—all gear except drift gillnet and long gillnet.

(2) *Unauthorized gear*. Gear types other than those specified in paragraph (c)(1) of this section are unauthorized gear and the following possession limitations apply:

(i) *Long gillnets*. A vessel with a long gillnet on board in, or that has fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ may not have on board on that trip a coastal migratory pelagic fish.

(ii) *Drift gillnets*. A vessel with a drift gillnet on board in, or that has fished on a trip in, the Gulf EEZ may not have on board on that trip a coastal migratory pelagic fish.

(iii) *Other unauthorized gear*. Except as specified in paragraph (c)(2)(iv) of this section, a person aboard a vessel with unauthorized gear other than a drift gillnet in the Gulf EEZ or a long gillnet on board in, or that has fished in, the EEZ where such gear is not authorized in paragraph (c)(1) of this section, is subject to the bag limit for king and Spanish mackerel specified in § 622.39(c)(1)(ii) and to the limit on cobia specified in § 622.32(c)(1).

(iv) *Exception for king mackerel in the Gulf EEZ*. The provisions of this paragraph (c)(2)(iv) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (c)(2)(iii) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(A) Such vessel may not use unauthorized gear in a directed fishery for king mackerel in the Gulf EEZ.

(B) If such a vessel has a drift gillnet or a long gillnet on board or a run-around gillnet in an area other than the southern Florida west coast subzone, no king mackerel may be possessed.

(C) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone, the possession of king mackerel taken incidentally is restricted only by the closure provisions of

§ 622.43(a)(3) and the trip limits specified in § 622.44(a). See also paragraph (c)(4) of this section regarding the purse seine incidental catch allowance of king mackerel.

(3) *Gillnets*—(i) *King mackerel*. The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for king mackerel is 4.75 inches (12.1 cm), stretched mesh. A vessel in such EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 4.75 (12.1 cm) inches, stretched mesh, may not possess on that trip an incidental catch of king mackerel that exceeds 10 percent, by number, of the total lawfully possessed Spanish mackerel on board.

(ii) *Spanish mackerel*. (A) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(*1*) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(*2*) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

(B) On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary—

(*1*) No person may fish with, set, place in the water, or have on board a gillnet with a float line longer than 800 yd (732 m).

(*2*) No person may fish with, set, or place in the water more than one gillnet at any one time.

(*3*) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm).

(*4*) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water.

(*5*) The float line of each gillnet possessed, including any net in use, must have the distinctive floats specified in § 622.6(b)(2).

(4) *Purse seine incidental catch allowance*. A vessel in the EEZ, or having fished in the EEZ, with a purse seine on board will not be considered as fishing, or having fished, for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (c)(2) of this section, in violation of the possession limits under paragraph (c)(2)(iii) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 622.43(a), provided the king mackerel on board does not exceed 1 percent, or the Spanish mackerel on board does not exceed 10 percent, of all fish on board the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.42(c) and are subject to the prohibition of sale under § 622.43(a)(3)(iii).

(d) *South Atlantic snapper-grouper*—(1) *Authorized gear*. Subject to the gear restrictions specified in § 622.31, the following are the only gear types authorized in a directed fishery for snapper-grouper in the South Atlantic EEZ: Bandit gear, bottom longline, buoy gear, handline, rod and reel, sea bass pot, and spearfishing gear.

(2) *Unauthorized gear*. All gear types other than those specified in paragraph (d)(1) of this section are unauthorized gear and the following possession and transfer limitations apply.

(i) A vessel with trawl gear on board that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, on board harvested such fish in the EEZ.

(ii) Except as specified in paragraphs (d)(3) through (d)(5) of this section, a person aboard a vessel with unauthorized gear on board, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) South Atlantic snapper-grouper species for which a bag limit is specified in § 622.39(d)(1)—the bag limit.

(B) All other South Atlantic snapper-grouper—zero.

(iii) South Atlantic snapper-grouper on board a vessel with unauthorized gear on board may not be transferred at sea, regardless of where such transfer takes place, and such snapper-grouper may not be transferred in the EEZ.

(iv) No vessel may receive at sea any South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in paragraph (d)(2)(iii) of this section.

(3) *Possession allowance regarding sink nets off North Carolina.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina with a sink net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(3), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

(4) *Possession allowance regarding bait nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with no more than one bait net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(4), a bait net is a gillnet not exceeding 50 ft (15.2 m) in length or 10 ft (3.1 m) in height with stretched mesh measurements of 1.5 inches (3.8 cm) or smaller that is attached to the vessel when deployed.

(5) *Possession allowance regarding cast nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with a cast net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(5), a cast net is a cone-shaped net thrown by hand and designed to spread out and capture fish as the weighted circumference sinks to the bottom and comes together when pulled by a line.

(6) *Longline species limitation.* A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ on a trip with a longline on board, may possess only the following South Atlantic snapper-grouper: snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(e) *South Atlantic golden crab.* Traps are the only fishing gear authorized in directed fishing for golden crab in the South Atlantic EEZ. Golden crab in or from the South Atlantic EEZ may not be retained on board a vessel possessing or using unauthorized gear.

(f) *Caribbean queen conch.* In the Caribbean EEZ, no person may harvest queen conch by diving while using a device that provides a continuous air supply from the surface.

(g) *BRD requirement for Gulf and South Atlantic shrimp*. On a shrimp trawler in the Gulf EEZ or South Atlantic EEZ, each net that is rigged for fishing must have a BRD installed that is listed in paragraph (g)(2) of this section and is certified or provisionally certified for the area in which the shrimp trawler is located, unless exempted as specified in paragraphs (g)(1)(i) through (iv) of this section. A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(1) *Exemptions from BRD requirement*—(i) *Royal red shrimp exemption*. A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler are royal red shrimp.

(ii) *Try net exemption*. A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in a single try net with a headrope length of 16 ft (4.9 m) or less provided the single try net is either placed immediately in front of another net or is not connected to another net.

(iii) *Roller trawl exemption*. A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any obstruction while being towed; and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(iv) *BRD certification testing exemption*. A shrimp trawler that is authorized by the RA to participate in the pre-certification testing phase or to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the ''Bycatch Reduction Device Testing Manual'' is granted a limited exemption from the BRD requirement specified in this paragraph (g). The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified or provisionally certified BRDs.

(2) *Procedures for certification and decertification of BRDs*. The process for the certification of BRDs consists of two phases--an optional pre-certification phase and a required certification phase. The RA may also provisionally certify a BRD.

(i) *Pre-certification*. The pre-certification phase allows a person to test and evaluate a new BRD design for up to 60 days without being subject to the observer requirements and rigorous testing requirements specified for certification testing in the ''Bycatch Reduction Device Testing Manual.''

(A) A person who wants to conduct pre-certification phase testing must submit an application to the RA, as specified in the ''Bycatch Reduction Device Testing Manual.'' The ''Bycatch Reduction Device Testing Manual'', which is available from the RA, upon request, contains the application forms.

(B) After reviewing the application, the RA will determine whether to issue a letter of authorization (LOA) to conduct pre-certification trials upon the vessel specified in the application. If the RA authorizes pre-certification, the RA's LOA must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification*. A person who proposes a BRD for certification for use in the Gulf EEZ or South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the ''Bycatch Reduction Device Testing Manual.'' The RA will issue a LOA to conduct certification trials upon the vessel specified in the application if the RA finds that: The operation plan submitted with the application meets the requirements of the ''Bycatch Reduction Device Testing Manual'; the observer identified in

the application is qualified; and the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If authorization to conduct certification trials is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. To be certified for use in the fishery, the BRD candidate must successfully demonstrate a 30 percent reduction in total weight of finfish bycatch. In addition, the BRD candidate must satisfy the following conditions: There is at least a 50–percent probability the true reduction rate of the BRD candidate meets the bycatch reduction criterion and there is no more than a 10–percent probability the true reduction rate of the BRD candidate is more than 5 percentage points less than the bycatch reduction criterion. If a BRD meets both conditions, consistent with the ''Bycatch Reduction Device Testing Manual'', NMFS, through appropriate rulemaking procedures, will add the BRD to the list of certified BRDs in paragraph (g)(3) of this section; and provide the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(iii) *Provisional certification*. Based on data provided consistent with the ''Bycatch Reduction Device Testing Manual'', the RA may provisionally certify a BRD if there is at least a 50–percent probability the true reduction rate of the BRD is no more than 5 percentage points less than the bycatch reduction criterion, i.e. 25 percent reduction in total weight of finfish bycatch. Through appropriate rulemaking procedures, NMFS will add the BRD to the list of provisionally certified BRDs in paragraph (g)(3) of this section; and provide the specifications for the BRD, including any special conditions deemed appropriate based on the certification testing results. A provisional certification is effective for 2 years from the date of publication of the notification in the FEDERAL REGISTER announcing the provisional certification.

(iv) *Decertification*. The RA will decertify a BRD if NMFS determines the BRD does not meet the requirements for certification or provisional certification. Before determining whether to decertify a BRD, the RA will notify the appropriate Fishery Management Council in writing, and the public will be provided an opportunity to comment on the advisability of any proposed decertification. The RA will consider any comments from the Council and public, and if the RA elects to decertify the BRD, the RA will proceed with decertification via appropriate rulemaking.

(3) *Certified and provisionally certified BRDs* —(i) *Certified BRDS*. The following BRDs are certified for use in the Gulf EEZ and South Atlantic EEZ unless indicated otherwise. Specifications of these certified BRDs are contained in Appendix D to this part.

(A) Fisheye.

(B) Gulf fisheye.

(C) Jones-Davis.

(D) Modified Jones-Davis.

(E) Expanded mesh.

(F) Extended funnel -South Atlantic EEZ only.

(ii) *Provisionally certified BRDs*. The following BRDs are provisionally certified for use in the areas and for the time periods indicated. Specifications of these provisionally certified BRDs are contained in Appendix D to this part.

(A) Extended funnel- Gulf EEZ only; through February 16, 2010.

(B) Composite panel -Gulf EEZ and South Atlantic EEZ; through February 16, 2010.

(h) [Reserved]

(i) *Gulf reef fish exhibiting trap rash*. Possession of Gulf reef fish in or from the Gulf EEZ that exhibit trap rash is prima facie evidence of illegal trap use and is prohibited. For the purpose of this paragraph, trap rash is defined as physical damage to fish that characteristically results from contact with wire fish traps. Such damage includes, but is not limited to, broken fin spines, fin rays, or teeth; visually obvious loss of scales; and cuts or abrasions on the body of the fish, particularly on the head, snout, or mouth.

(j) *Rock shrimp in the South Atlantic off Georgia and Florida*. The minimum mesh size for the cod end of a rock shrimp trawl net in the South Atlantic

EEZ off Georgia and Florida is 1 7/8 inches (4.8 cm), stretched mesh. This minimum mesh size is required in at least the last 40 meshes forward of the cod end drawstring (tie-off rings), and smaller-mesh bag liners are not allowed. A vessel that has a trawl net on board that does not meet these requirements may not possess a rock shrimp in or from the South Atlantic EEZ off Georgia and Florida.

(k) *Pelagic sargassum.* The minimum allowable mesh size for a net used to fish for pelagic sargassum in the South Atlantic EEZ is 4.0 inches (10.2 cm), stretched mesh, and such net must be attached to a frame no larger than 4 ft by 6 ft (1.2 m by 1.8 m). A vessel in the South Atlantic EEZ with a net on board that does not meet these requirements may not possess any pelagic sargassum.

(l) *Atlantic dolphin and wahoo*—(1) *Authorized gear.* The following are the only authorized gear types in the fisheries for dolphin and wahoo in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types other than authorized gear types may not possess a dolphin or wahoo.

(2) [Reserved]

(m) *Required gear in the Gulf reef fish fishery.* For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (m)(1) through (m)(3) of this section.

(1) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required when fishing with natural baits.

(2) *Dehooking device.* At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without reengaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

(3) *Venting tool.* At least one venting tool is required and must be used to deflate the swim bladders of Gulf reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16–gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45–degree angle approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 61 FR 65484, Dec. 13, 1996; 62 FR 18539, Apr. 16, 1997; 63 FR 10568, Mar. 4, 1998; 63 FR 18144, Apr. 14, 1998; 63 FR 38303, July 16, 1998; 64 FR 3628, Jan. 25, 1999; 64 FR 36781, July 8, 1999; 64 FR 37694, July 13, 1999; 64 FR 43941, Aug. 12, 1999; 64 FR 45459, Aug. 20, 1999; 64 FR 52428, Sept. 29, 1999; 64 FR 59126, Nov. 2, 1999; 64 FR 68935, Dec. 9, 1999; 65 FR 16340, Mar. 28, 2000; 65 FR 52957, Aug. 31, 2000; 65 FR 61116, Oct. 16, 2000; 68 FR 2196, Jan. 16, 2003; 68 FR 57378, Oct. 3, 2003; 69 FR 1541, Jan. 9, 2004; 69 FR 30242, May 27, 2004; 70 FR 62082, Oct. 28, 2005; 70 FR 73388, Dec. 12, 2005; 73 FR 411, Jan. 3, 2008; 73 FR 8223, Feb. 13, 2008; 73 FR 5128, Jan. 29, 2008]

§ 622.42 Quotas.

Quotas apply for the fishing year for each species or species group. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ. Quotas for species managed under this part are as follows. (See § 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits.)

(a) *Gulf reef fish*—(1) *Commercial quotas.* The following quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(i) Red snapper -2.55 million lb (1.16 million kg), round weight.

(A) Two-thirds of the quota specified in § 622.42(a)(1)(i), 3.10 million lb (1.41

million kg), available at noon on February 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(B) The remainder available at noon on October 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined—1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, goliath grouper, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined—8.80 million lb (3.99 million kg), gutted weight, that is, eviscerated but otherwise whole. Within the shallow-water grouper quota there is a separate quota for red grouper—5.31 million lb (2.41 million kg), gutted weight. When either the shallow-water grouper quota or the red grouper quota is reached, the entire shallow-water grouper fishery will be closed and the closure provisions of § 622.43(a) introductory text and § 622.43(a)(1)(i) apply to the entire shallow-water grouper fishery.

(iv) Tilefishes (i.e., tilefish and goldface, blackline, anchor, and blueline tilefish) combined—0.44 million lb (0.20 million kg), gutted weight, that is, eviscerated but otherwise whole.

(v) Greater amberjack—503,000 lb (228,157 kg), round weight.

(vi) Gray triggerfish—(A) *For fishing year 2008*—80,000 lb (36,287 kg), round weight.

(B) For fishing year 2009 -93,000 lb (42,184 kg), round weight.

(C) *For fishing year 2010 and subsequent fishing years*—106,000 lb (48,081 kg), round weight.

(2) *Recreational quotas*. The following quotas apply to persons who fish for Gulf reef fish other than under commercial vessel permits for Gulf reef fish and the applicable commercial quotas specified in paragraph (a)(1) of this section.

(i) *Recreational quota for red snapper*. The recreational quota for red snapper is 2.45 million lb (1.11 million kg), round weight.

(ii) *Recreational quota for greater amberjack*. The recreational quota for greater amberjack is 1,368,000 lb (620,514 kg), round weight.

(b) *Gulf and South Atlantic allowable octocoral*. The quota for all persons who harvest allowable octocoral in the EEZ of the Gulf and South Atlantic is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

(c) *King and Spanish mackerel*. King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv). A fish is counted against the quota for the area where it is caught when it is first sold.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group*. The quota for the Gulf migratory group of king mackerel is 3.26 million lb (1.48 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) Eastern zone—2.25 million lb (1.02 million kg), which is further divided into quotas as follows:

(*1*) Florida east coast subzone—1,040,625 lb (472,020 kg).

(*2*) Florida west coast subzone—(*i*) *Southern*—1,040,625 lb (472,020 kg), which is further divided into a quota of 520,312 lb (236,010 kg) for vessels fishing with hook-and-line and a quota of 520,312 lb (236,010 kg) for vessels fishing with run-around gillnets.

(*ii*) Northern—168,750 lb (76,544 kg).

(*3*) Description of Florida subzones. The Florida east coast subzone is that part of the eastern zone north of 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone

that extends south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat., a line directly west from the Lee/Collier County, FL, boundary (i.e., the area off Collier and Monroe Counties). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. and 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary (i.e., off Collier County). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. and 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

(B) Western zone—1.01 million lb (0.46 million kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of king mackerel is 3.71 million lb (1.68 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group*. The quota for the Gulf migratory group of Spanish mackerel is 5.187 million lb (2.353 million kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 3.87 million lb (1.76 million kg).

(d) *Royal red shrimp in the Gulf*. The quota for all persons who harvest royal red shrimp in the Gulf is 392,000 lb (177.8 mt), tail weight.

(e) *South Atlantic snapper-grouper, excluding wreckfish*. The quotas apply to persons who are not subject to the bag limits. (See § 622.39(a)(1) for applicability of the bag limits.) The quotas are in gutted weight, that is, eviscerated but otherwise whole.

(1) *Snowy grouper*. (i) For the fishing year that commences January 1, 2007—118,000 lb (53,524 kg).

(ii) For the fishing year that commences January 1, 2008, and for subsequent fishing years–84,000 lb (38,102 kg).

(2) *Golden tilefish*—295,000 lb (133,810 kg).

(3) *Greater amberjack*—1,169,931 lb (530,672 kg).

(4) *Vermilion snapper*—1,100,000 lb (498,952 kg).

(5) *Black sea bass*. (i) For the fishing year that commences June 1, 2006—477,000 lb (216,364 kg).

(ii) For the fishing year that commences June 1, 2007—423,000 lb (191,870 kg).

(iii) For the fishing year that commences June 1, 2008, and for subsequent fishing years—309,000 lb (140,160 kg).

(6) *Red porgy*—127,000 lb (57,606 kg).

(f) *Wreckfish*. The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 2 million lb (907,185 kg), round weight. See § 622.15 for information on the wreckfish shareholder under the ITQ system.

(g) *Pelagic sargassum*. The quota for all persons who harvest pelagic sargassum in the South Atlantic EEZ is 5,000 lb (2,268 kg), wet, landed weight. See § 622.35(g)(1) for area limitations on the harvest of pelagic sargassum.

[61 FR 34934, July 3, 1996, as amended at 61 FR 48643, Sept. 16, 1996; 62 FR 13988, Mar. 25, 1997; 62 FR 23674, May 1, 1997; 62 FR 46679, Sept. 4, 1997; 62 FR 67723, Dec. 30, 1997; 63 FR 8356, Feb. 19, 1998; 63 FR 10569, Mar. 4, 1998; 64 FR 3629, Jan. 25, 1999; 64 FR 45459, Aug. 20, 1999; 64 FR 59126, Nov. 2, 1999; 65 FR 16340, Mar. 28, 2000; 65 FR 30363, May 11, 2000; 65 FR 41016, July 3, 2000; 65 FR 50162, Aug. 17, 2000; 66 FR 17369, Mar. 30, 2001; 68 FR 57378, Oct. 3, 2003; 69 FR 33320, June 15, 2004; 71 FR 28285, May 16, 2006; 71 FR 55107, Oct. 23, 2006; 71 FR 67462, Nov. 22, 2006; 73 FR 411, Jan. 3, 2008; 73 FR 5128, Jan. 28, 2008; 73 FR 38143, July 3, 2008]

§ 622.43 Closures.

(a) *General*. When a quota specified in § 622.42 is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the following closure restrictions apply:

(1) *Gulf reef fish*—(i) *Commercial quotas*. The application of bag limits described in this paragraph (a)(1)(i) notwithstanding, bag limits of Gulf reef fish may not be possessed on board a vessel with commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, on board, as specified in § 622.39(a)(5).

(A) If the recreational fishery for the indicated species is open, the bag and

possession limits specified in § 622.39(b) apply to all harvest or possession in or from the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited. In addition, the bag and possession limits for red snapper, when applicable, apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested.

(B) If the recreational fishery for the indicated species is closed, all harvest or possession in or from the Gulf EEZ of the indicated species is prohibited.

(ii) *Recreational quota for red snapper.* The bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(iii) *Recreational quota for greater amberjack.* The bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

(2) *Gulf and South Atlantic allowable octocoral.* Allowable octocoral may not be harvested or possessed in the Gulf EEZ or South Atlantic EEZ and the sale or purchase of allowable octocoral in or from the Gulf EEZ or South Atlantic EEZ is prohibited.

(3) *King and Spanish mackerel.* The closure provisions of this paragraph (a)(3) do not apply to Atlantic migratory group Spanish mackerel, which are managed under the commercial trip limits specified in § 622.44(b) in lieu of the closure provisions of this section.

(i) A person aboard a vessel for which a commercial permit for king or Spanish mackerel has been issued, as required under § 622.4(a)(2)(iii) or (iv), may not fish for king or Spanish mackerel in the EEZ or retain king or Spanish mackerel in or from the EEZ under a bag or possession limit specified in § 622.39(c) for the closed species, migratory group, zone, subzone, or gear, except as provided for under paragraph (a)(3)(ii) of this section.

(ii) A person aboard a vessel for which valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish and a valid commercial vessel permit for king or Spanish mackerel have been issued may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

(iii) The sale or purchase of king or Spanish mackerel of the closed species, migratory group, zone, subzone, or gear type is prohibited, including such king or Spanish mackerel taken under the bag limits.

(4) *Royal red shrimp in the Gulf.* Royal red shrimp in or from the Gulf EEZ may not be retained, and the sale or purchase of royal red shrimp taken from the Gulf EEZ is prohibited.

(5) *South Atlantic greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, and red porgy.* The appropriate bag limits specified in § 622.39(d)(1) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of the applicable species in or from the South Atlantic EEZ, and the sale or purchase of the applicable species taken from the EEZ is prohibited. In addition, the bag and possession limits for the applicable species and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested.

(6) *Wreckfish.* Wreckfish in or from the South Atlantic EEZ may not be retained, and the sale or purchase of wreckfish taken from the South Atlantic EEZ is prohibited.

(7) *Pelagic sargassum.* Pelagic sargassum may not be fished for or possessed in the South Atlantic EEZ and the sale or purchase of pelagic sargassum in or from the South Atlantic EEZ is prohibited.

(b) *Exception to prohibition on sale/purchase.* (1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, or specified snapper-grouper species in paragraphs (a)(1), (a)(3)(iii), (a)(4), or (a)(5) and (a)(6), respectively, of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(2) The prohibition on sale/purchase during a closure for allowable octocoral in paragraph (a)(2) of this section or for pelagic sargassum in paragraph (a)(7) of this section does not apply to allowable octocoral or pelagic sargassum that was harvested and landed ashore prior to the effective date of the closure.

(c) *Reopening*. When a fishery has been closed based on a projection of the quota specified in § 622.42 being reached and subsequent data indicate that the quota was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the fishery to provide an opportunity for the quota to be reached.

[61 FR 34934, July 3, 1996, as amended at 62 FR 13988, Mar. 25, 1997; 62 FR 46679, Sept. 4, 1997; 62 FR 67723, Dec. 30, 1997; 63 FR 10569, Mar. 4, 1998; 64 FR 3629, Jan. 25, 1999; 64 FR 59126, Nov. 2, 1999; 67 FR 43565, June 28, 2002; 68 FR 57378, Oct. 3, 2003; 71 FR 45436, Aug. 9, 2006; 71 FR 55107, Oct. 23, 2006; 73 FR 38143, July 3, 2008]

§ 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

(a) *King mackerel*—(1) *Atlantic group*. The following trip limits apply to vessels for which commercial permits for king mackerel have been issued, as required under § 622.4(a)(2)(iii):

(i) North of 29°25′ N. lat., which is a line directly east from the Flagler/Volusia County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(ii) In the area between 29°25′ N. lat. and 28°47.8′ N. lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(iii) In the area between 28°47.8′ N. lat. and 25°20.47′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 75 fish from April 1 through October 31.

(iv) In the area between 25°20.4′ N. lat. and 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,250 lb (567 kg) from April 1 through October 31.

(2) *Gulf group*. Commercial trip limits are established in the eastern and western zones as follows. (See § 622.42(c)(1)(i) for specification of the eastern and western zones and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone-Florida east coast subzone*. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board at any time or landed in a day from a vessel with a commercial permit for king mackerel as required under § 622.4(a)(2)(iii) as follows:

(A) From November 1 through January 31—not to exceed 50 fish.

(B) Beginning on February 1 and continuing through March 31—

(*1*) If 75 percent or more of the Florida east coast subzone quota as specified in § 622.42(c)(1)(i)(A)(1) has been taken—not to exceed 50 fish.

(*2*) If less than 75 percent of the Florida east coast subzone quota as specified in § 622.42(c)(1)(i)(A)(1) has been taken—not to exceed 75 fish.

(ii) *Eastern zone-Florida west coast subzone*—(A) *Gillnet gear*. (*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may

be possessed on board or landed from a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(p) or § 622.43(a).

(*2*) In the southern Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial vessel permit for king mackerel and a king mackerel gillnet permit.

(*ii*) King mackerel from the southern west coast subzone landed by a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*i*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued.

(B) *Hook-and-line gear*. In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.4(a)(2)(iii), and operating under the hook-and-line gear quotas in § 622.42(c)(1)(i)(A)(*2*)(*i*) or (c)(1)(i)(A)(*2*)(*ii*):

(*1*) From July 1, each fishing year, until 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested, until a closure of the respective northern or southern subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

(iii) *Notice of trip limit changes*. The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section when the requisite harvest level has been reached or is projected to be reached.

(iv) *Western zone*. In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.43(a)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) *Spanish mackerel*. (1) Commercial trip limits are established for Atlantic migratory group Spanish mackerel as follows:

(i) North of 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), in amounts exceeding 3,500 lb (1,588 kg).

(ii) South of 30°42′45.6″ N. lat., Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(A) From March 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays through Fridays—unlimited.

(*2*) Saturdays and Sundays—not exceeding 1,500 lb (680 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,500 lb (680 kg).

(D) After 100 percent of the adjusted quota is taken through the end of the fishing year, in amounts not exceeding 500 lb (227kg).

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.62 million lb (1.64 million kg). The adjusted quota is the quota

for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or is projected to be reached.

(3) For the purpose of paragraph (b)(1)(ii) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. If a vessel terminates a trip prior to 6 a.m., but retains Spanish mackerel on board after that time, the Spanish mackerel retained on board will not be considered in possession during the succeeding day, provided the vessel is not underway between 6 a.m. and the time such Spanish mackerel are unloaded, and provided such Spanish mackerel are unloaded prior to 6 p.m.

(c) *South Atlantic snapper-grouper*. When a vessel fishes on a trip in the South Atlantic EEZ, the vessel trip limits specified in this paragraph (c) apply, provided persons aboard the vessel are not subject to the bag limits. See § 622.39(a) for applicability of the bag limits.

(1) *Trip-limited permits*. A vessel for which a trip-limited permit for South Atlantic snapper-grouper has been issued is limited to 225 lb (102.1 kg) of snapper-grouper.

(2) *Golden tilefish*. (i) Until 75 percent of the fishing year quota specified in § 622.42(e)(2) is reached—4,000 lb (1,814 kg).

(ii) After 75 percent of the fishing year quota specified in § 622.42(e)(2) is reached—300 lb (136 kg). However, if 75 percent of the fishing year quota has not been taken on or before September 1, the trip limit will not be reduced. The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect a trip limit change specified in this paragraph, (c)(2)(ii), when the applicable conditions have been taken.

(iii) See § 622.43(a)(5) for the limitations regarding golden tilefish after the fishing year quota is reached.

(3) *Snowy grouper*. (i) During the 2007 fishing year, until the quota specified in § 622.42(e)(1)(ii) is reached—175 lb (79 kg).

(ii) During the 2008 and subsequent fishing years, until the quota specified in § 622.42(e)(1)(iii) is reached—100 lb (45 kg).

(iii) See § 622.43(a)(5) for the limitations regarding snowy grouper after the fishing year quota is reached.

(4) *Red porgy*. (i) From May 1 through December 31—120 fish.

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.36(b)(5) applies.

(iii) See § 622.43(a)(5) for the limitations regarding red porgy after the fishing year quota is reached.

(5) *Greater amberjack*. Until the fishing year quota specified in § 622.42(e)(3) is reached, 1,000 lb (454 kg). See § 622.43(a)(5) for the limitations regarding greater amberjack after the fishing year quota is reached.

(d) [Reserved]

(e) *Caribbean queen conch*. A person who fishes in the Caribbean EEZ and is not subject to the bag limit may not possess in or from the Caribbean EEZ more than 150 queen conch per day.

(f) *Atlantic dolphin and wahoo*. (1) The trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(2) The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

(g) *Gulf deep-water and shallow-water grouper, combined*. For vessels operating under the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for Gulf deep-water and shallow-water grouper combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species

subject to the closure is zero. (See § 622.42(a)(1)(ii) and (a)(1)(iii) for the species included in the deep-water and shallow-water grouper categories, respectively.)

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.44, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 622.45 Restrictions on sale/purchase.

In addition to restrictions on sale/purchase related to closures, as specified in § 622.43 (a) and (b), restrictions on sale and/or purchase apply as follows.

(a) *Caribbean coral reef resource.* (1) No person may sell or purchase a Caribbean prohibited coral harvested in the Caribbean EEZ.

(2) A Caribbean prohibited coral that is sold in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the Caribbean EEZ, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual, harvesting the Caribbean prohibited coral.

(iii) The port and date of landing the Caribbean prohibited coral.

(iv) A statement signed by the person selling the Caribbean prohibited coral attesting that, to the best of his or her knowledge, information, and belief, such Caribbean prohibited coral was harvested other than in the Caribbean EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

(b) *Caribbean reef fish.* A live red hind or live mutton snapper in or from the Caribbean EEZ may not be sold or purchased and used in the marine aquarium trade.

(c) *Gulf reef fish.* (1) A Gulf reef fish harvested in the EEZ on board a vessel that does not have a valid commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), or a Gulf reef fish possessed under the bag limits specified in § 622.39(b), may not be sold or purchased.

(2) A Gulf reef fish harvested on board a vessel that has a valid commercial permit for Gulf reef fish may be sold only to a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4).

(3) A Gulf reef fish harvested in the EEZ may be purchased by a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for Gulf reef fish.

(4) From February 15 until March 15, each year, no person may sell or purchase a gag, black grouper, or red grouper harvested from the Gulf by a vessel with a valid Federal commercial permit for Gulf reef fish. This prohibition on sale/purchase does not apply to gag, black grouper, or red grouper that were harvested, landed ashore, and sold prior to February 15 and were held in cold storage by a dealer or processor.

(d) *South Atlantic snapper-grouper.* (1) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(2) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi), or from a person who has a valid commercial license to sell fish in the state where the purchase occurs.

(3) Except for the sale or purchase of South Atlantic snapper-grouper harvested by a vessel that has a valid commercial permit for South Atlantic snapper-grouper, the sale or purchase of such fish is limited to the bag limits specified in § 622.39(d)(1).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(5) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the

South Atlantic. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the red porgy;

(iii) The port and date of offloading from the vessel harvesting the red porgy; and

(iv) A statement signed by the dealer attesting that the red porgy was harvested from an area other than the South Atlantic.

(6) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the greater amberjack;

(iii) The port and date of offloading from the vessel harvesting the greater amberjack; and

(iv) A statement signed by the dealer attesting that the greater amberjack was harvested from an area other than the South Atlantic.

(7) During March and April, no person may sell or purchase a gag or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during March and April does not apply to gag or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of gag or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the gag or black grouper;

(iii) The port and date of offloading from the vessel harvesting the gag or black grouper; and

(iv) A statement signed by the dealer attesting that the gag or black grouper was harvested from an area other than the South Atlantic.

(8) No person may sell or purchase a snowy grouper, golden tilefish, greater amberjack, vermilion snapper, black sea bass, or red porgy harvested from or possessed in the South Atlantic by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued for the remainder of the fishing year after the applicable commercial quota for that species specified in § 622.42(e) has been reached. The prohibition on sale/purchase during these periods does not apply to such of the applicable species that were

harvested, landed ashore, and sold prior to the applicable commercial quota being reached and were held in cold storage by a dealer or processor.

(e) *Gulf and South Atlantic wild live rock*. Wild live rock in or from the Gulf EEZ or South Atlantic EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock from the South Atlantic EEZ that was harvested and landed prior to January 1, 1996, or to wild live rock from the Gulf EEZ that was harvested and landed prior to January 1, 1997.

(f) *South Atlantic golden crab*. (1) A female golden crab in or from the South Atlantic EEZ may not be sold or purchased.

(2) A golden crab harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for golden crab, as required under § 622.4(a)(2)(x), may not be sold or purchased.

(3) A golden crab harvested on board a vessel that has a valid commercial permit for golden crab may be sold only to a dealer who has a valid permit for golden crab, as required under § 622.4(a)(4).

(4) A golden crab harvested in the South Atlantic EEZ may be purchased by a dealer who has a valid permit for golden crab, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for golden crab.

(g) *South Atlantic rock shrimp*. (1) Rock shrimp harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for rock shrimp, as required under § 622.4(a)(2)(viii), may not be transferred, received, sold, or purchased.

(2) Rock shrimp harvested on board a vessel that has a valid commercial permit for rock shrimp may be transferred or sold only to a dealer who has a valid permit for rock shrimp, as required under § 622.4(a)(4).

(3) Rock shrimp harvested in the South Atlantic EEZ may be received or purchased by a dealer who has a valid permit for rock shrimp, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for rock shrimp.

(h) *Cut-off (damaged) king or Spanish mackerel*. A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits specified in § 622.37(c)(2) or (c)(3), respectively, or that is in excess of the trip limits specified in § 622.44(a) or (b), respectively.

(i) *Atlantic dolphin and wahoo*. (1) A person may sell dolphin or wahoo harvested in the Atlantic EEZ only if it is harvested by a vessel that has a commercial permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(2)(xii)(A), or by a vessel authorized a 200–lb (91–kg) trip limit for dolphin or wahoo, as specified in § 622.44(f)(2), and only to a dealer who has a permit for Atlantic dolphin or wahoo, as required under § 622.4(a)(4).

(2) In addition to the provisions of paragraph (i)(1) of this section, a person may not sell dolphin in excess of the bag limit or any wahoo harvested in the Atlantic EEZ by a vessel while it was operating as a charter vessel or headboat.

(3) Dolphin or wahoo harvested in the Atlantic EEZ may be purchased only by a dealer who has a permit for Atlantic dolphin and wahoo and only from a vessel authorized to sell dolphin or wahoo under paragraph (i)(1) or (i)(2) of this section.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43960, Aug. 27, 1996; 61 FR 47449, Sept. 9, 1996; 63 FR 10569, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 3629, Jan. 25, 1999; 64 FR 59126, Nov. 2, 1999; 65 FR 16341, Mar. 28, 2000; 65 FR 31831, May 19, 2000; 65 FR 51253, Aug. 23, 2000; 69 FR 30242, May 27, 2004; 70 FR 33389, June 8, 2005; 71 FR 55108, Oct. 23, 2006; 73 FR 411, Jan. 3, 2008]

§ 622.46 Prevention of gear conflicts.

(a) No person may knowingly place in the Gulf EEZ any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the FMP for the Shrimp Fishery of the Gulf of Mexico, the RA may modify or establish separation zones for shrimp trawling and the use of fixed gear to prevent gear

conflicts. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

(c) In accordance with the procedures and restrictions of the FMP for Coastal Migratory Pelagic Resources, when the RA determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in the South Atlantic EEZ off the east coast of Florida between 27°00.6′ N. lat. and 27°50.0′ N. lat., the RA may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

[61 FR 34934, July 3, 1996, as amended at 64 FR 59126, Nov. 2, 1999]

§ 622.47 Gulf groundfish trawl fishery.

Gulf groundfish trawl fishery means fishing in the Gulf EEZ by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

(a) Other provisions of this part notwithstanding, the owner or operator of a vessel in the Gulf groundfish trawl fishery is exempt from the following requirements and limitations for the vessel's unsorted catch of Gulf reef fish:

(1) The requirement for a valid commercial vessel permit for Gulf reef fish in order to sell Gulf reef fish.

(2) Minimum size limits for Gulf reef fish.

(3) Bag limits for Gulf reef fish.

(4) The prohibition on sale of Gulf reef fish after a quota closure.

(b) Other provisions of this part notwithstanding, a dealer in a Gulf state is exempt from the requirement for a dealer permit for Gulf reef fish to receive Gulf reef fish harvested from the Gulf EEZ by a vessel in the Gulf groundfish trawl fishery.

§ 622.48 Adjustment of management measures.

In accordance with the framework procedures of the applicable FMPs, the RA may establish or modify the following items:

(a) *Caribbean coral reef resources.* Species for which management measures may be specified; prohibited species; harvest limitations, including quotas, trip, or daily landing limits; gear restrictions; closed seasons or areas; and marine conservation districts.

(b) *Caribbean reef fish.* Size limits, closed seasons or areas, fish trap mesh size, and the threshold level for overfishing.

(c) *Coastal migratory pelagic fish.* For a species or species group: Age-structured analyses, target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}) (or proxy), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), OY, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, permit requirements, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(d) *Gulf reef fish.* (1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, quotas, MSY (or proxy), OY, and estimates of stock biomass achieved by fishing at MSY (B_{MSY}), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT).

(2) SMZs and the gear restrictions applicable in each.

(e) *Gulf royal red shrimp.* MSY, OY, and TAC.

(f) *South Atlantic snapper-grouper and wreckfish.* Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, and restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs.

(g) *South Atlantic golden crab.* Biomass levels, age-structured analyses, MSY, ABC, TAC, quotas (including

quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the RA to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(h) *South Atlantic shrimp*. Biomass levels, age-structured analyses, BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, times and locations when the use of BRDs is required, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(i) *Gulf shrimp*. Closed seasons and areas, target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specification.

(j) *Gulf red drum*. Target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}), OY, TAC, minimum stock size threshold (MSST), maximum fishing mortality threshold (MFMT), escapement rates for juvenile fish, bag limits, size limits, gear harvest limits, and other restrictions required to prevent exceeding allocations or quotas.

(k) *Atlantic coast red drum*. Definitions of essential fish habitat and essential fish habitat HAPCs or Coral HAPCs.

(l) *South Atlantic coral, coral reefs, and live/hard bottom habitats*. Definitions of essential fish habitat and essential fish habitat HAPCs or Coral HAPCs.

(m) *Atlantic dolphin and wahoo*. Biomass levels, age-structured analyses, MSY, OY, ABC, TAC, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the RA to close a fishery when a quota is reached or is projected to be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43960, Aug. 27, 1996; 62 FR 13988, Mar. 25, 1997; 62 FR 18539, Apr. 16, 1997; 63 FR 10569, Mar. 4, 1998; 63 FR 18144, Apr. 14, 1998; 64 FR 36781, July 8, 1999; 65 FR 31835, May 19, 2000; 65 FR 37296, June 14, 2000; 65 FR 51253, Aug. 23, 2000; 67 FR 22362, May 3, 2002; 69 FR 30242, May 27, 2004; 73 FR 5128, Jan. 29, 2008]

§ 622.49 Accountability measures.

(a) *Gulf reef fish*—(1) *Greater amberjack*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(v), the Assistant Administrator for Fisheries, NOAA, (AA) will file a notification with the Office of the Federal Register to close the commercial fishery for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the quota, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the quota for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational fishery*. If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable recreational quota specified in § 622.42(a)(2)(ii), the AA will file a notification with the Office of the Federal Register, to close the recreational fishery for the remainder of the fishing year. In addition, if despite such closure, recreational landings exceed the quota, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the recreational fishing season for the following fishing year by the amount necessary to recover the overage from the prior fishing year. Further, during that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure recreational

harvest achieves but does not exceed the intended harvest level.

(2) *Gray triggerfish*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in §622.42(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the applicable annual catch limit (ACL), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the quota for that following year by the amount the prior-year ACL was exceeded. The applicable ACLs are 105,000 lb (47,627 kg) for 2008, 122,000 lb (55,338 kg) for 2009, and 138,000 lb (62,596 kg) for 2010 and subsequent fishing years.

(ii) *Recreational fishery*. If recreational landings, as estimated by the SRD, exceed the applicable ACL, the AA will file a notification with the Office of the Federal Register reducing the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational target total allowable catch for that following fishing year. The applicable ACLs are 394,000 lb (178,715 kg) for 2008, 426,000 lb (193,230 kg) for 2009, and 457,000 lb (207,291 kg) for 2010 and subsequent fishing years. The recreational target total allowable catches are 356,000 lb (161,479 kg) for 2009 and 405,000 lb (183,705 kg) for 2010 and subsequent fishing years. Recreational landings will be evaluated relative to the applicable ACL as follows. For 2008, only 2008 recreational landings will be compared to the ACL; in 2009, the average of 2008 and 2009 recreational landings will be compared to the ACL; and in 2010 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

(b) [Reserved]

[73 FR 31843, July 3, 2008]

APPENDIX A TO PART 622—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES

I. Coelenterates—Phylum Coelenterata
A. Hydrocorals—Class Hydrozoa
1. Hydroids—Order Athecatae
Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals
B. Anthozoans—Class Anthozoa
1. Soft corals—Order Alcyonacea
Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei
Telesto spp.
2. Gorgonian corals—Order Gorgonacea
Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis spp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari

3. Hard Corals—Order Scleractinia
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
4. Black Corals—Order Antipatharia
Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral
II. Sea grasses—Phylum Angiospermae
Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass
Aquarium Trade Species in the Coral FMP—The following species are included for data collection purposes only.
I. Sponges—Phylum Porifera
A. Demosponges—Class Demospongiae
Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona spp., Finger sponge
Myriastra spp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta
II. Coelenterates—Phylum Coelenterata
A. Anthozoans—Class Anthozoa
1. Anemones—Order Actiniaria
Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
2. Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
3. False Corals—Order Corallimorpharia
Discosoma spp. (formerly *Rhodactis*), False coral
Ricordia florida, Florida false coral
III. Annelid Worms—Phylum Annelida
A. Polychaetes—Class Polychaeta
Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm
IV. Mollusks—Phylum Mollusca
A. Gastropods—Class Gastropoda
Family Elysiidae
Tridachia crispata, Lettuce sea slug
Family Olividae
Oliva reticularis, Netted olive
Family Ovulidae
Cyphoma gibbosum, Flamingo tongue
B. Bivalves—Class Bivalvia
Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americanus, Atlantic thorny oyster
C. Cephalopods—Class Cephalopoda
1. Octopuses—Order Octopoda
Family Octopodidae
Octopus spp. (except the Common octopus, *O. vulgaris*)
V. Arthropods—Phylum Arthropoda
A. Crustaceans—Subphylum Crustacea
1. Decapods—Order Decapoda
Family Alpheidae
Alpheaus armatus, Snapping shrimp
Family Diogenidae

Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
Family Grapsidae
Percnon gibbesi, Nimble spray crab
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Palaemonida
Periclimenes spp., Cleaner shrimp
Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.
Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp
VI. Echinoderms—Phylum Echinodermata
A. Feather stars—Class Crinoidea
Analcidometra armata, Swimming crinoid
Davidaster spp., Crinoids
Nemaster spp., Crinoids
B. Sea stars—Class Asteroidea
Astropecten spp., Sand stars
Linckia guildingii, Common comet star
Ophidiaster guildingii, Comet star
Oreaster reticulatus, Cushion sea star
C. Brittle and basket stars—Class Ophiuroidea
Astrophyton muricatum, Giant basket star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
D. Sea Urchins—Class Echinoidea
Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg
E. Sea Cucumbers—Class Holothuroidea
Holothuria spp., Sea cucumbers
VII. Chordates—Phylum Chordata
A. Tunicates—Subphylum Urochordata

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH

Lutjanidae—Snappers
Unit 1
Silk snapper, *Lutjanus vivanus*
Blackfin snapper, *L. buccanella*
Black snapper, *Apsilus dentatus*
Vermilion snapper, *Rhomboplites aurorubens*
Unit 2
Queen snapper, *Etelis oculatus*
Wenchman, *Pristipomoides aquilonaris*
Unit 3
Gray snapper, *Lutjanus griseus*
Lane snapper, *Lutjanus synagris*
Mutton snapper, *Lutjanus analis*
Dog snapper, *Lutjanus jocu*
Schoolmaster, *Lutjanus apodus*
Mahogany snapper, *Lutjanus mahogani*
Unit 4
Yellowtail snapper, *Ocyurus chrysurus*
Serranidae—Sea basses and Groupers
Unit 1
Nassau Grouper, *Epinephelus striatus*
Unit 2
Goliath grouper, *Epinephelus itajara*
Unit 3
Red hind, *Epinephelus guttatus*
Coney, *Epinephelus fulvus*
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Creole-fish, *Paranthias furcifer*
Unit 4
Red grouper, *Epinephelus morio*
Yellowedge grouper, *Epinephelus flavolimbatus*
Misty grouper, *Epinephelus mystacinus*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteroperca venenosa*
Haemulidae—Grunts
White grunt, *Haemulon plumieri*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Bluestriped grunt, *Haemulon sciurus*
French grunt, *Haemulon flavolineatum*
Porkfish, *Anisotremus virginicus*
Mullidae—Goatfishes
Spotted goatfish, *Pseudupeneus maculatus*
Yellow goatfish, *Mulloidichthys martinicus*
Sparidae—Porgies
Jolthead porgy, *Calamus bajonado*
Sea bream, *Archosargus rhomboidalis*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*
Holocentridae—Squirrelfishes
Blackbar soldierfish, *Myripristis jacobus*
Bigeye, *Priacanthus arenatus*
Longspine squirrelfish, *Holocentrus rufus*
Squirrelfish, *Holocentrus adscensionis*
Malacanthidae—Tilefishes
Blackline tilefish, *Caulolatilus cyanops*
Sand tilefish, *Malacanthus plumieri*
Carangidae—Jacks
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Almaco jack, *Seriola rivoliana*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Yellow jack, *Caranx bartholomaei*
Scaridae—Parrotfishes
Blue parrotfish, *Scarus coeruleus*
Midnight parrotfish, *Scarus coelestinus*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Rainbow parrotfish, *Scarus guacamaia*
Redfin parrotfish, *Sparisoma rubripinne*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*
Redband parrotfish, *Sparisoma aurofrenatum*
Striped parrotfish, *Scarus croicensis*
Acanthuridae—Surgeonfishes
Blue tang, *Acanthurus coeruleus*
Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Balistidae—Triggerfishes
Ocean triggerfish, *Canthidermis sufflamen*

Queen triggerfish, *Balistes vetula*
Sargassum triggerfish, *Xanthichthys rigens*
Monacanthidae—Filefishes
Scrawled filefish, *Aluterus scriptus*
Whitespotted filefish, *Cantherhines macrocerus*
Black durgon, *Melichthys niger*
Ostraciidae—Boxfishes
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Spotted trunkfish, *Lactophrys bicaudalis*
Smooth trunkfish, *Lactophrys triqueter*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Puddingwife, *Halichoeres radiatus*
Spanish hogfish, *Bodianus rufus*
Pomacanthidae—Angelfishes
Queen angelfish, *Holacanthus ciliaris*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Aquarium Trade—The following aquarium trade species are included for data collection purposes only:
Frogfish, *Antennarius* spp.
Flamefish, *Apogon maculatus*
Conchfish, *Astrapogen stellatus*
Redlip blenny, *Ophioblennius atlanticus*
Peacock flounder, *Bothus lunatus*
Longsnout butterflyfish, *Chaetodon aculeatus*
Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*
Redspotted hawkfish, *Amblycirrhitus pinos*
Flying gurnard, *Dactylopterus volitans*
Atlantic spadefish, *Chaetodipterus faber*
Neon goby, *Gobiosoma oceanops*
Rusty goby, *Priolepis hipoliti*
Royal gramma, *Gramma loreto*
Creole wrasse, *Clepticus parrae*
Yellowcheek wrasse, *Halichoeres cyanocephalus*
Yellowhead wrasse, *Halichoeres garnoti*
Clown wrasse, *Halichoeres maculipinna*
Pearly razorfish, *Hemipteronotus novacula*
Green razorfish, *Hemipteronotus splendens*
Bluehead wrasse, *Thalassoma bifasciatum*
Chain moray, *Echidna catenata*
Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*
Batfish, *Ogcocepahalus* spp.
Goldspotted eel, *Myrichthys ocellatus*
Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*
Cherubfish, *Centropyge argi*
Rock beauty, *Holacanthus tricolor*
Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*
Glasseye snapper, *Priacanthus cruentatus*
High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*
Scorpaenidae—Scorpionfishes
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*
Caribbean tonguefish, *Symphurus arawak*
Seahorses, *Hippocampus* spp.
Pipefishes, *Syngnathus* spp.
Sand diver, *Synodus intermedius*
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

TABLE 3 OF APPENDIX A TO PART 622—GULF REEF FISH

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Carangidae—Jacks
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Goldface tilefish, *Caulolatilus chrysops*
Blackline tilefish, *Caulolatilus cyanops*
Anchor tilefish, *Caulolatilus intermedius*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lopholatilus chamaeleonticeps*
Serranidae—Groupers
Dwarf sand perch, *Diplectrum bivittatum*
Sand perch, *Diplectrum formosum*
Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Red hind, *Epinephelus guttatus*
Goliath grouper, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*

Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Carangidae—Jacks
Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Crevalle jack, *Caranx hippos*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Ephippidae—Spadefishes
Spadefish, *Chaetodipterus faber*
Haemulidae—Grunts
Black margate, *Anisotremus surinamensis*
Porkfish, *Anisotremus virginicus*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Smallmouth grunt, *Haemulon chrysargyreum*
French grunt, *Haemulon flavolineatum*
Spanish grunt, *Haemulon macrostomum*
Cottonwick, *Haemulon melanurum*
Sailors choice, *Haemulon parrai*
White grunt, *Haemulon plumieri*
Blue stripe grunt, *Haemulon sciurus*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Puddingwife, *Halichoeres radiatus*
Lutjanidae—Snappers
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray snapper, *Lutjanus griseus*
Mahogany snapper, *Lutjanus mahogoni*
Dog snapper, *Lutjanus jocu*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Blueline tilefish, *Caulolatilus microps*
Golden tilefish, *Lopholatilus chamaeleonticeps*
Sand tilefish, *Malacanthus plumieri*
Percichthyidae—Temperate basses
Wreckfish, *Polyprion americanus*
Serranidae—Groupers
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Goliath grouper, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteroperca venenosa*
Serranidae—Sea Basses
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*
Sparidae—Porgies
Sheepshead, *Archosargus probatocephalus*
Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Saucereye porgy, *Calamus calamus*
Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nodosus*
Red porgy, *Pagrus pagrus*
Longspine porgy, *Stenotomus caprinus*
Scup, *Stenotomus chrysops*

TABLE 5 OF APPENDIX A TO PART 622—CARIBBEAN CONCH RESOURCES

Queen conch, *Strombus gigas*

The following species are included for data collection purposes only:
Atlantic triton's trumpet, *Charonia variegata*
Cameo helmet, *Cassis madagascarensis*
Green star shell, *Astrea tuber*
Hawkwing conch, *Strombus raninus*
Milk conch, *Strombus costatus*
Roostertail conch, *Strombus gallus*
West Indian fighting conch, *Strombus pugilis*
True tulip, *Fasciolaria tulipa*

[61 FR 34934, July 3, 1996, as amended at 62 FR 13988, Mar. 25, 1997; 62 FR 67723, Dec. 30, 1997; 64 FR 57404, Oct. 25, 1999; 70 FR 62082, Oct. 28, 2005; 70 FR 73389, Dec. 12, 2005]

APPENDIX B TO PART 622—GULF AREAS

TABLE 1 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters north of Dry Tortugas	24°48.0′	82°48.0′
2 North of Rebecca Shoal	25°07.5′	82°34.0′
3 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
4 West of Egmont Key	27°30.0′	83°21.5′
5 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
6 Southeast corner of Florida Middle Ground	28°11.0′	84°00.0′
7 Southwest corner of Florida Middle Ground	28°11.0′	84°07.0′
8 West corner of Florida Middle Ground	28°26.6′	84°24.8′
9 Northwest corner of Florida Middle Ground	28°42.5′	84°24.8′
10 South of Carrabelle	29°05.0′	84°47.0′
11 South of Cape St. George	29°02.5′	85°09.0′
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0′	85°30.0′
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7′	85°30.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Pensacola	29°46.0′	87°19.0′
16 South of Perdido Bay	29°29.0′	87°27.5′
17 East of North Pass of the Mississippi River	29°14.5′	88°28.0′
18 South of Southwest Pass of the Mississippi River	28°46.5′	89°26.0′
19 Northwest tip of Mississippi Canyon	28°38.5′	90°08.5′
20 West side of Mississippi Canyon	28°34.5′	89°59.5′
21 South of Timbalier Bay	28°22.5′	90°02.5′
22 South of Terrebonne Bay	28°10.5′	90°31.5′
23 South of Freeport	27°58.0′	95°00.0′
24 Off Matagorda Island	27°43.0′	96°02.0′
25 Off Aransas Pass	27°30.0′	96°23.5′
26 Northeast of Port Mansfield	27°00.0′	96°39.0′
27 East of Port Mansfield	26°44.0′	96°37.5′
28 Northeast of Port Isabel	26°22.0′	96°21.0′
29 U.S./Mexico EEZ boundary	26°00.5′	96°24.5′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5′	82°41.5′
2 North of Marquesas Keys	24°48.0′	82°06.5′
3 Off Cape Sable	25°15.0′	82°02.0′
4 Off Sanibel Island—Inshore	26°26.0′	82°29.0′
5 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
6 West of Egmont Key	27°30.0′	83°21.5′
7 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
8 Off Anclote Keys—Inshore	28°10.0′	83°14.0′
9 Off Deadman Bay	29°38.0′	84°00.0′
10 Seaward limit of Florida's waters east of Cape St. George	29°35.5′	84°38.6′
Thence westerly along the seaward limit of Florida's waters to:		
11 Seaward limit of Florida's waters south of Cape San Blas	29°32.2′	85°27.1′
12 Southwest of Cape San Blas	29°30.5′	85°52.0′
13 Off St. Andrew Bay	29°53.0′	86°10.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Florida/Alabama border	29°34.5′	87°38.0′
16 Off Mobile Bay	29°41.0′	88°00.0′
17 South of Alabama/Mississippi border	30°01.5′	88°23.7′
18 Horn/Chandeleur Islands	30°01.5′	88°40.5′
19 Chandeleur Islands	29°35.5′	88°37.0′
20 Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3′	89°00.0′
Thence southerly and westerly along the seaward limit of Louisiana's waters to:		
21 Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3′	89°28.2′
22 Southeast of Grand Isle	29°09.0′	89°47.0′
23 Quick flashing horn buoy south of Isles Dernieres	28°32.5′	90°42.0′
24 Southeast of Calcasieu Pass	29°10.0′	92°37.0′
25 South of Sabine Pass—10 fathoms	29°09.0′	93°41.0′
26 South of Sabine Pass—30 fathoms	28°21.5′	93°28.0′
27 East of Aransas Pass	27°49.0′	96°19.5′
28 East of Baffin Bay	27°12.0′	96°51.0′
29 Northeast of Port Mansfield	26°46.5′	96°52.0′
30 Northeast of Port Isabel	26°21.5′	96°35.0′

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA—Continued

Point No. and reference location [1]	North lat.	West long.
31 U.S./Mexico EEZ boundary	26°00.5′	96°36.0′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

APPENDIX C TO PART 622—FISH LENGTH MEASUREMENTS

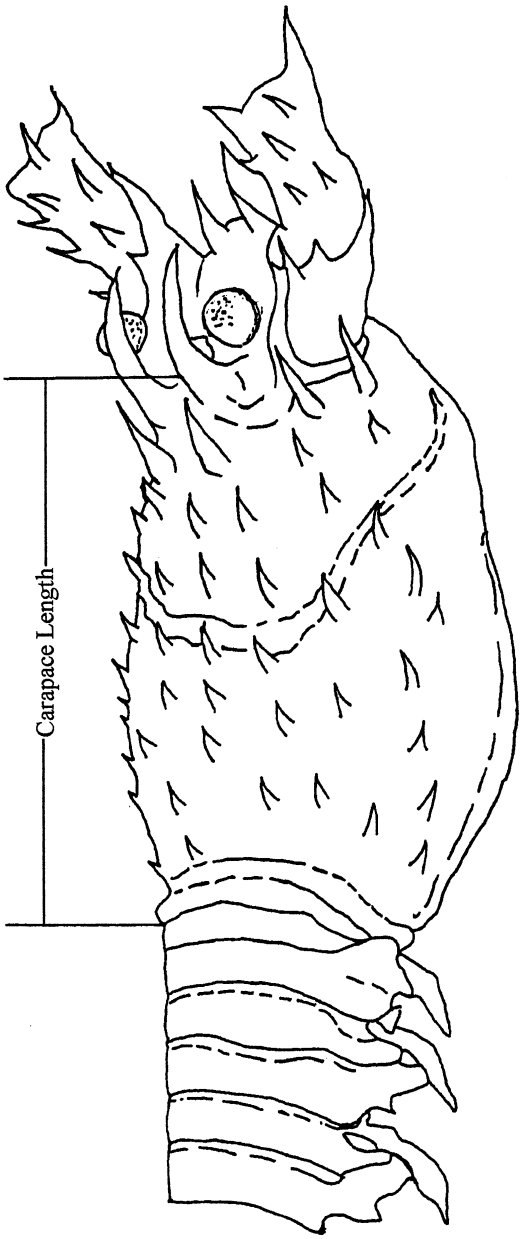

FIGURE 1 OF APPENDIX C TO PART 622—CARAPACE LENGTH

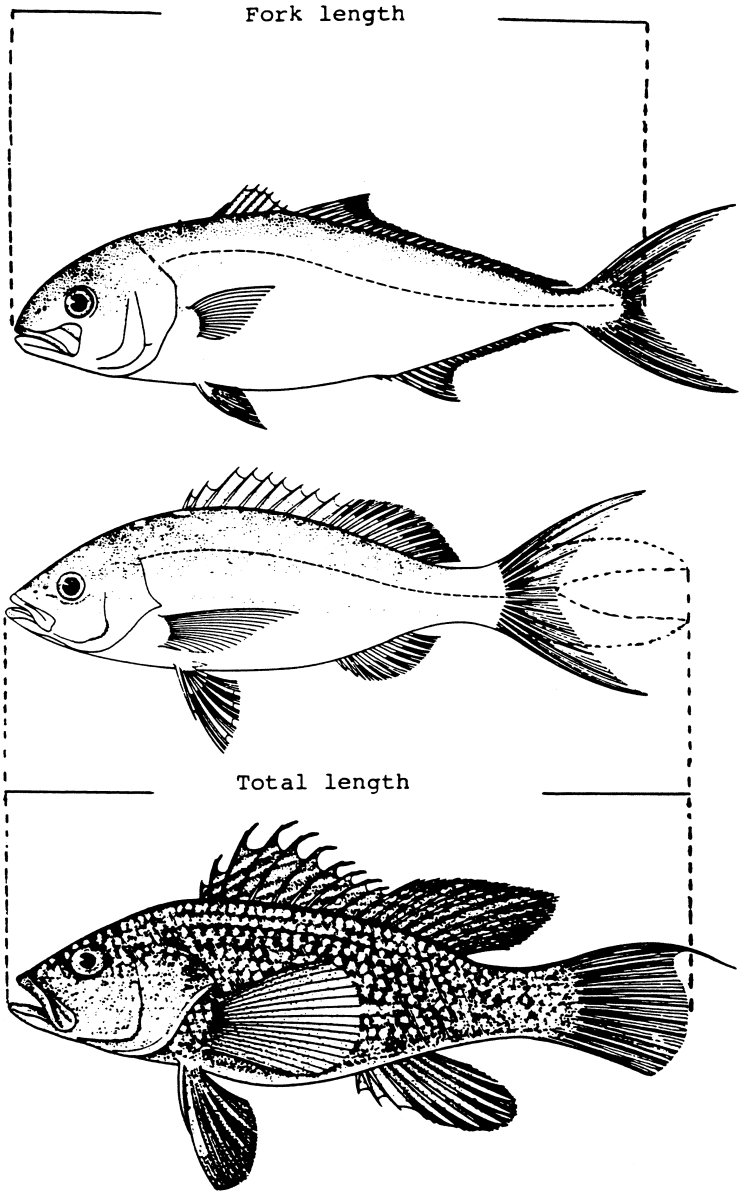

FIGURE 2 OF APPENDIX C TO PART 622—ILLUSTRATION OF LENGTH MEASUREMENTS

[61 FR 34934, July 3, 1996, as amended at 64 FR 3630, Jan. 25, 1999]

APPENDIX D TO PART 622—SPECIFICATIONS FOR CERTIFIED BRDS

A. *Extended Funnel.*

1. *Description*. The extended funnel BRD consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the codend. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

2. *Minimum Construction and Installation Requirements for Standard Size*.

(a) *Extension Material*. The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅝ inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section*. The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel*. The funnel is constructed of 1½ inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop*. A 30-inch (76.2-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation*. The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.2.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

3. *Minimum Construction and Installation Requirements for Inshore Size*.

(a) *Extension Material*. The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅜ inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section*. The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel*. The funnel is constructed of 1⅜ inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop*. A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must

be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation*. The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh*. The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

C. *Fisheye*.

1. *Description*. The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch diameter, which is inserted into the codend to form an escape opening. Fisheyes of several different shapes and sizes have been tested in different positions in the codend.

2. *Minimum Construction and Installation Requirements*. The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed at the top center of the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend drawstring (tie-off rings) or 70 percent of the distance between the codend drawstring and the forward edge of the codend, excluding any extension, whichever is the shorter distance. In the Gulf EEZ only, when the fisheye BRD is installed in this position, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system.

D. *Gulf fisheye*.

1. *Description*. The Gulf fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel that is inserted into the top center of the codend, or is offset not more than 15 meshes perpendicular to the top center of the codend, to form an escape opening.

2. *Minimum Construction and Installation Requirements*. The Gulf fisheye is a cone-shaped rigid frame constructed of aluminum or steel rods. The rods must be at least ¼-inch (6.35-mm) diameter. Any dimension of the escape opening must be at least 5.0 inches (12.7 cm), and the total escape opening area must be at least 36.0 in^2 (232.3 cm^2). The Gulf fisheye must be installed in the codend of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 12.5 ft (3.81 m) and no less than 8.5 ft (2.59 m) from the codend tie-off rings. When installed in this position, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system. The Gulf fisheye may not be offset more than 15 meshes perpendicular to the top center of the codend.

E. *Jones-Davis*.

1. *Description*. The Jones-Davis BRD is similar to the expanded mesh and the extended funnel BRDs except that the fish escape openings are windows cut around the funnel rather than large-mesh sections. In addition, a webbing cone fish deflector is installed behind the funnel.

2. *Minimum Construction and Installation Requirements*. The Jones-Davis BRD must contain all of the following.

(a) *Webbing extension*. The webbing extension must be constructed from a single piece of 1⅝-inch (3.5-cm) stretch mesh number 30 nylon 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42-mesh side together.

(b) *28-inch (71.1-cm) cable hoop*. A single hoop must be constructed of ½-inch (1.3-cm) steel cable 88 inches (223.5 cm) in length. The cable must be joined at its ends by a 3-inch (7.6-cm) piece of ½-inch (1.3-cm) aluminum pipe and pressed with a ⅜-inch (0.95-cm) die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches (68.6 and 73.7 cm). The hoop must be attached to the extension webbing 17½ meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(c) *24-inch (61.0-cm) hoop*. A single hoop must be constructed of either number 60 twine 80 inches (203.2 cm) in length or ⅜-inch (0.95-cm) steel cable 75½ inches (191.8 cm) in length. If twine is used, the twine must be laced in and out of the extension webbing 39 meshes behind the leading edge, and the ends must be tied together. If cable is used, the cable must be joined at its ends by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe and pressed together with a ¼-inch (0.64-cm) die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches (58.4 and 63.4 cm). The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger.

The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel*. The funnel must be constructed from four sections of 1½-inch (3.8-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29½ meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29½ meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23-mesh edge to form the funnel.

(e) *Attachment of the funnel in the webbing extension*. The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position.

(f) *Cutting the escape openings*. The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(g) *Alternative Method for Constructing the Funnel and Escape Openings*. The following method for constructing the funnel and escape openings may be used instead of the method described in paragraphs F.2.d., F.2.e., and F.2.f. of this section. With this alternative method, the funnel and escape openings are formed by cutting a flap in each side of the extension webbing; pushing the flaps inward; and attaching the top and bottom edges along the bars of the extension webbing to form the v-shape of the funnel. Minimum requirements applicable to this method include: (1) The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop); (2) clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position; (3) the leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid; and, (4) the area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). To construct the funnel and escape openings using this method, begin 3½ meshes from the leading edge of the extension, at the top center seam, count over 18 meshes on each side, and cut 13 meshes toward the back of the extension. Turn parallel to the leading edge, and cut 26 meshes toward the bottom center of the extension. Next, turn parallel to the top center seam, and cut 13 meshes forward toward the leading edge, creating a flap of webbing 13 meshes by 26 meshes by 13 meshes. Lengthen the flap to 18 meshes by adding a 4½-mesh by 26-mesh rectangular section of webbing to the 26-mesh edge. Attach the 18-mesh edges to the top and bottom of the extension by sewing 2 bars of the extension to 1 mesh on the flap in toward the top center and bottom center of the extension, forming the exit opening and the funnel. Connect the two flaps together in the center with a 7-inch piece of number 42 twine to allow adequate clearance for fish escapement between the flaps and the side openings. On each side, sew a 6-mesh by 10½-mesh section of webbing to 6 meshes of the center of the 26-mesh cut on the extension and 6 meshes centered between the 13-mesh cuts 3½ meshes from the leading edge. This forms two 10-mesh by 13-mesh openings on each side.

(h) *Cone fish deflector*. The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.13-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10–14 inches (25.4–35.6 cm) of the posterior edge of the funnel.

(i) *11-inch (27.9-cm) cable hoop for cone deflector*. A single hoop must be constructed of 5/16-inch (0.79-cm) or ⅜-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(j) *Installation of the cone in the extension*. The cone must be installed in the extension 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine 4 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine must be attached to the 28-inch (71.1-cm) cable hoop

at the center of each of its sides; the points of attachment for the two pieces of twine must be measured 20 inches (50.8 cm) from the midpoint attachment. Two 8-inch (20.3-cm) pieces of number 60 twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24-inch (61-cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11-inch (27.9-cm) cone hoop.

F. *Modified Jones-Davis.*

1. *Description.* The Modified Jones-Davis BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. *Minimum Construction and Installation Requirements.* The Modified Jones-Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1 5/8–inch (4.1–cm) stretch mesh number 30 nylon with dimensions of 39 ½ meshes by 150 meshes. A tube is formed from the extension webbing by sewing the 39 ½–mesh-sides together.

(b) *Funnel.* The funnel must be constructed from two sections of 1 5/8–inch (4.1–cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 25 meshes on the leading edge by 21 meshes deep. The 25–mesh leading edge of each polyethylene webbing section must be sewn evenly two meshes in from the front of the extension webbing starting 25 meshes from the top center on each side. The 21–mesh edge must be sewn to the extension webbing on a 9–bar and 1–mesh angle in the top and bottom, forming a V-shape funnel.

(c) *Cutting the escape opening.* The leading edge of the escape openings must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 635 in2 (4,097 cm2). Two escape openings, 6 meshes wide by 12 meshes deep, must be cut 4 meshes apart in the extension webbing, starting at the top center extension seam, 7 meshes back from the leading edge, and 30 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(d) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1 5/8–inch (4.1–cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 12 inches (30.5 cm) of the posterior edge of the funnel.

(e) *11–inch (27.9–cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16–inch (0.79–cm) or 3/8–inch (0.95–cm) cable 34 ½ inches (87.6 cm) in length. The ends must be joined by a 3–inch (7.6–cm) piece of 3/8–inch (0.95–cm) aluminum pipe pressed together with a 1/4–inch (0.64–cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(f) *Installation of the cone in the extension.* The apex of the cone must be installed in the extension within 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine (or at least 4–mesh wide strip of number 21 or heavier webbing) 3 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine or webbing must be attached within 5 meshes of the aft edge of the funnel at the center of each of its sides. Two 12–inch (30.5–cm) pieces of number 60 (or heavier) twine must be attached to the top and bottom of the 11–inch (27.9–cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the extension webbing to keep the cone from inverting into the funnel.

G. *Composite Panel.*

1. *Description.* The Composite Panel BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing with square mesh panels on the inside instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. *Minimum Construction and Installation Requirements.* The Composite Panel BRD must contain all of the following:

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1 ½–inch to 1 5/8–inch (3.8–cm to 4.1–cm) stretch mesh number 30 nylon with dimensions of 24 ½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24 ½–mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2–ply in design, each with an inner layer of 1 ½–inch to 1 5/8–inch (3.8–cm to 4.1–cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of 2–inch (5.1–cm) square mesh webbing (1–inch bar).

The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36–mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1 ½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20–mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20–mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of 2–inch (5.1–cm) webbing that is 18 bars or squares on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18 bar leading edge of each square mesh layer must be sewn evenly 1 bar to 2 meshes of the 36–mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20–mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening*. There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

Note: The ''Bycatch Reduction Device Testing Manual'' is published, excluding the Manual's appendices, as an appendix to this document. See the contact under **ADDRESSES** to obtain a complete Manual.

[62 FR 18539, Apr. 16, 1997, as amended at 64 FR 37694, July 13, 1999; 73 FR 8224, Feb. 13, 2008]

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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AUTHORITY: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

SOURCE: 64 FR 29135, May 28, 1999, unless otherwise noted.

Subpart A—General

§ 635.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic tunas, Atlantic billfish, Atlantic sharks, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, and the Fishery Management Plan for Atlantic Billfishes. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management unit. The Atlantic billfish regulations govern conservation and management of Atlantic billfish in the management unit. The Atlantic swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The shark regulations govern conservation and management of sharks in the management unit, solely under the authority of the Magnuson-Stevens Act. Sharks are managed under the authority of the Magnuson-Stevens Act.

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the boundaries of, the States of New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

§ 635.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, ATCA, and § 600.10 of this chapter, the terms used in this part have following meanings. If applicable, the terms used in this part supercede those used in § 600.10:

Archival tag means a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish.

ATCA Certificate of Eligibility (COE) means the certificate that must accompany any applicable shipment of fish pursuant to a finding under 16 U.S.C. 971d (c)(4) or (c)(5).

Atlantic HMS means Atlantic tunas, billfish, sharks, and swordfish.

Atlantic Ocean, as used in this part, includes the North and South Atlantic Oceans, the Gulf of Mexico, and the Caribbean Sea.

Atlantic shark identification workshop certificate means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic shark identification workshop.

BAYS means Atlantic bigeye, albacore, yellowfin, and skipjack tunas as defined in § 600.10 of this part.

BFT landings quota means the portion of the ICCAT BFT catch quota allocated to the United States against which landings of BFT are counted.

Billfish Certificate of Eligibility (COE) means a certificate that accompanies a shipment of billfish indicating that the billfish or related species, or parts thereof, are not from the respective Atlantic Ocean management units.

Bottom longline means a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom.

BSD tag means a numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics

information program and recorded on a BSD.

Buoy gear means a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached.

Caudal keel means the horizontal ridges along each side of a fish at the base of the tail fin.

CFL (curved fork length) means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Charleston Bump closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 34°00′ N. lat. near Wilmington Beach, NC, and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00′ N. lat., 76°00′ W. long.; 31°00′ N. lat., 76°00′ W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 31°00′ N. lat. near Jekyll Island, GA.

Circle hook means a fishing hook originally designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

CK means the length of a fish measured along the body contour, i.e., a curved measurement, from the point on the cleithrum that provides the shortest possible measurement along the body contour to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Conventional tag means a numbered, flexible ribbon that is implanted or affixed to a fish that is released back into the ocean that allows for the identification of that fish in the event it is recaptured.

Corrodible Hook means a fishing hook composed of any material other than stainless steel.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of BFT sold to a permitted dealer as required under § 635.5(b)(2)(ii).

Dehooking device means a device intended to remove a hook embedded in a fish in order to release the fish with minimum damage.

Designated by NMFS means the address or location indicated in a letter to permit holders or in a letter accompanying reporting forms.

DeSoto Canyon closed area means the area within the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 30°00′ N. lat., 88°00′ W. long.; 30°00′ N. lat., 86°00′ W. long.; 28°00′ N. lat., 86°00′ W. long.; 28°00′ N. lat., 84°00′ W. long.; 26°00′ N. lat., 84°00′ W. long.; 26°00′ N. lat., 86°00′ W. long.; 28°00′ N. lat., 86°00′ W. long.; 28°00′ N. lat., 88°00′ W. long.; 30°00′ N. lat., 88°00′ W. long.

Display permit means a permit issued in order to catch and land HMS for the purpose of public display pursuant to § 635.32.

Division Chief means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West Highway, Silver Spring, MD, 20910; (301) 713–2347.

Downrigger means a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. The downrigger has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line gear.

Dress, for swordfish, tunas, and billfish, means to process a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass. For sharks, dress means to process a fish by removal of head and viscera, but does not include removal of the fins, backbone, halving, quartering, or otherwise further reducing the carcass.

Dressed weight (dw), for swordfish, tunas, and billfish, means the weight of a fish after it has been dressed. For sharks, dressed weight means the weight of a fish after it has been

dressed and had its fins, including the tail, removed.

East Florida Coast closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 31°00′ N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00′ N. lat., 78°00′ W. long.; 28°17′10″ N. lat., 79°11′24″ W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00′ N. lat.; then proceeding due west to 24°00′ N. lat., 81°47′ W. long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47′ W. long. near Key West, FL.

EFP means an exempted fishing permit issued pursuant to § 600.745 of this chapter or to § 635.32.

Eviscerated means a fish that has only the alimentary organs removed.

Export, for purposes of this subpart, means to effect exportation.

Exportation has the same general meaning as 19 CFR 101.1 and generally refers to a severance of goods from the mass of things belonging to one country with the intention of uniting them to the mass of things belonging to some foreign country. For purposes of this subpart, a shipment between the United States and its insular possessions is not an export.

Exporter, for purposes of this subpart, is the principal party in interest, meaning the party that receives the primary benefit, monetary or otherwise, of the export transaction. For exports from the United States, the exporter is the U.S. principal party in interest, as identified in Part 30 of title 15 of the CFR. An exporter is subject to the requirements of this subpart, even if exports are exempt from statistical reporting requirements under Part 30 of title 15 of the CFR.

Finlet means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

First receiver means any entity, person, or company that takes, for commercial purposes (other than solely for transport), immediate possession of the fish, or any part of the fish, as the fish are offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter, whose owner or operator has been issued, or should have been issued, a valid permit under this part.

First transaction in the United States means the time and place at which a fish is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

Fishing record means all records of navigation and operations of a fishing vessel, as well as all records of catching, harvesting, transporting, landing, purchasing, or selling a fish.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing year means—

(1) For Atlantic tunas and swordfish, before January 1, 2008 — June 1 through May 31. On or after January 1, 2008 — January 1 through December 31.

(2) For Atlantic billfish, On or after January 1, 2007 — January 1 through December 31.

(3) For sharks — January 1 through December 31.

Floatation device means any positively buoyant object rigged to be attached to a fishing gear.

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

For-hire trip means a recreational fishing trip taken by a vessel with an Atlantic HMS Charter/Headboat permit during which paying passenger(s) are aboard; or, for uninspected vessels, trips during which there are more than three persons aboard, including operator and crew; or, for vessels that have been issued a Certificate of Inspection by the U.S. Coast Guard to carry passengers for hire, trips during which there are more persons aboard than the number of crew specified on the vessel's Certificate of Inspection.

Freeboard is defined as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design.

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

Giant BFT means an Atlantic BFT measuring 81 inches (206 cm) CFL or greater.

Handgear means handline, harpoon, rod and reel, bandit gear, buoy gear, or speargun gear.

Handline means fishing gear that is attached to, or in contact with, a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is released and retrieved by hand rather than by mechanical means.

High-flyer means a flag, radar reflector or radio beacon transmitter, suitable for attachment to a longline to facilitate its location and retrieval.

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in appendix A to this part); white marlin; blue marlin; sailfish; and longbill spearfish.

Importer, for purposes of this subpart, means the principal party responsible for the import of product into a country. For imports into the United States, and for purposes of this subpart, ''importer'' means the consignee as identified on entry documentation or any authorized, equivalent electronic medium required for release of shipments, or any authorized equivalent entry documentation from the customs authority of the United States or the separate customs territory of a U.S. insular possession. If a consignee is not declared, then the importer of record is considered to be the consignee.

LAP means a limited access permit issued pursuant to § 635.4.

Large coastal shark (LCS) means one of the species, or a part thereof, listed in paragraph (a) of table 1 in appendix A to this part.

Large medium BFT means a BFT measuring at least 73 inches (185 cm) and less than 81 inches (206 cm) CFL.

Large school BFT means a BFT measuring at least 47 inches (119 cm) and less than 59 inches (150 cm) CFL.

LJFL (lower jaw-fork length) means the straight-line measurement of a fish from the tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

Longline means fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

Madison-Swanson closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 29°17′ N. lat., 85°50′ W. long.; 29°17′ N. lat., 85°38′ W. long.; 29°06′ N. lat., 85°38′ W. long.; 29°06′ N. lat., 85°50′ W. long.; and 29°17′ N. lat., 85°50′ W. long.

Management unit means in this part:

(1) For Atlantic tunas, longbill spearfish, blue marlin and white marlin, means all fish of these species in the Atlantic Ocean;

(2) For sailfish, means all fish of this species in the Atlantic Ocean west of 30° W. long.;

(3) For North Atlantic swordfish, means all fish of this species in the Atlantic Ocean north of 5° N. lat.;

(4) For South Atlantic swordfish, means all fish of this species in the Atlantic Ocean south of 5° N. lat.; and

(5) For sharks, means all fish of the species listed in Table 1 of Appendix A to this part, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

Mid-Atlantic Bight means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

Mid-Atlantic shark closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 35°41′ N. lat. just south of Oregon Inlet, North Carolina, and connecting by straight lines the following coordinates in the order stated: 35°41′ N. lat., 75°25′ W. long. proceeding due east to 35°41′ N. lat., 74°51′ W. long.; then proceeding southeast to 35°30′ N. lat., 74°46′ W. long.; then proceeding southwest, roughly following the 55 fathom mark, to 33°51′ N. lat., 76°24′ W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°51′ N. lat., 77°53′ W. long. near Cape Fear, North Carolina.

Naturally attached refers to shark fins that remain attached to the shark carcass via at least some portion of uncut skin.

Net check refers to a visual inspection of a shark gillnet where the vessel operator transits the length of the gear and inspects it either with a spotlight or by pulling up the gear.

Non-ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(2) of table 1 in appendix A to this part.

Non-sandbar LCS means one of the species, or part thereof, listed under heading A of Table 1 in Appendix A of this part other than the sandbar shark (*Carcharhinus plumbeus*).

North Atlantic swordfish or North Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean north of 5° N. lat.

Northeast Distant gear restricted area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long.

Northeastern United States closed area means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00′ N. lat., 74°00′ W. long.; 40°00′ N. lat., 68°00′ W. long.; 39°00′ N. lat., 68°00′ W. long.; and 39°00′ N. lat., 74°00′ W. long.

Offset circle hook means a circle hook originally designed and manufactured so that the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

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

Pectoral fin means the fin located behind the gill cover on either side of a fish.

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

Pelagic shark means one of the species, or a part thereof, listed in paragraph (c) of table 1 in appendix A to this part.

PFCFL (pectoral fin curved fork length) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Prohibited shark means one of the species, or a part thereof, listed in paragraph (d) of table 1 in appendix A to this part.

Protected species safe handling, release, and identification workshop certificate means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic HMS protected species safe handling, release, and identification workshop.

Restricted-fishing day (RFD) means a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel for which a General category permit for Atlantic Tunas has been issued may not fish for, possess, or retain a BFT.

Ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(1) of table 1 in appendix A to this part.

School BFT means a BFT measuring at least 27 inches (69 cm) and less than 47 inches (119 cm) CFL.

Shark means one of the oceanic species, or a part thereof, listed in Table 1 of Appendix A to this part.

Shark research permit means a permit issued to catch and land a limited number of sharks to maintain time series for stock assessments and for other scientific research purposes. These permits may be issued only to the owner of a vessel who has been issued either a directed or incidental shark LAP. The permit is specific to the commercial shark vessel and owner combination and is valid only per the terms and conditions listed on the permit.

Small coastal shark (SCS) means one of the species, or a part thereof, listed in paragraph (b) of table 1 in appendix A to this part.

Small medium BFT means a BFT measuring at least 59 inches (150 cm) and less than 73 inches (185 cm) CFL.

South Atlantic swordfish or south Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean south of 5° N. lat.

Speargun fishing gear means a muscle-powered speargun equipped with a trigger mechanism, a spear with a tip designed to penetrate and retain fish, and terminal gear. Terminal gear may include, but is not limited to, trailing lines, reels, and floats. The term ''muscle-powered speargun'' for the purposes of this part means a speargun that stores potential energy provided from the operator's muscles, and that releases only the amount of energy that the operator has provided to it from his or her own muscles. Common energy storing methods for muscle-powered spearguns include compressing air and springs, and the stretching of rubber bands.

Steamboat Lumps closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28°14′ N. lat., 84°48′ W. long.; 28°14′ N. lat., 84°37′ W. long.; 28°03′ N. lat., 84°37′ W. long.; 28°03′ N. lat., 84°48′ W. long.; and 28°14′ N. lat., 84°48′ W. long.

Tournament means any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching or landing such fish.

Tournament operator means a person or entity responsible for maintaining records of participants and results used for awarding tournament points or prizes, regardless of whether fish are retained.

Trip limit means the total allowable take from a single trip as defined in § 600.10 of this chapter.

Tuna or tuna-like means the Scombriformes (with the exception of families Trichiuridae and Gempylidae and the genus Scomber) and such other species of fishes that are regulated by ICCAT in the Atlantic Ocean.

Weighout slip means a document provided to the owner or operator of the vessel by a person who weighs fish or parts thereof that are landed from a fishing vessel. A document, such as a ''tally sheet,'' ''trip ticket,'' or ''sales receipt,'' that contains such information is considered a weighout slip.

Young school BFT means an Atlantic BFT measuring less than 27 inches (69 cm) CFL.

[64 FR 29135, May 28, 1999, as amended at 65 FR 47237, Aug. 1, 2000; 66 FR 8904, Feb. 5, 2001; 67 FR 45400, July 9, 2002; 67 FR 77436, Dec. 18, 2002; 68 FR 74784, Dec. 24, 2003; 69 FR 40754, July 6, 2004; 69 FR 67283, Nov. 17, 2004; 69 FR 70399, Dec. 6, 2004; 71 FR 58163, Oct. 2, 2006; 73 FR 31389, June 2, 2008; 73 FR 40707, July 15, 2008]

EFFECTIVE DATE NOTE: At 73 FR 54733, Sept. 23, 2008, § 635.2 was amended by adding the definition for ''Greenstick gear,'' effective October 23, 2008. For the convenience of the user, the added text is set forth as follows:

§ 635.2 Definitions.

* * * * *

Greenstick gear means an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green–stick does not constitute a pelagic longline or a bottom longline as defined in this section or as described at § 635.21(c) or § 635.21(d), respectively.

* * * * *

§ 635.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and in paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and § 600.740 of this chapter, respectively.

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing or exempted educational activity, or for public display, as specified in § 635.32.

[64 FR 29135, May 28, 1999, as amended at 68 FR 74784, Dec. 24, 2003]

§ 635.4 Permits and fees.

Information on permits and permit requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *General*—(1) *Authorized activities.* Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions.

(2) *Vessel permit inspection.* The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.

(3) *Property rights.* Limited access vessel permits or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, limited access vessel permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) *Dealer permit inspection.* A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

(5) *Display upon offloading.* Upon offloading of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit; Atlantic tunas, shark, or swordfish permit; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(7) *Alteration.* A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (b) of this section, may be charged for issuance of the replacement permit.

(9) *Fees.* NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(10) *Permit condition.* An owner of a vessel with a valid swordfish, shark, HMS Angling, or HMS Charter/Headboat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit,

without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

(b) *HMS Charter/Headboat permits.* (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) *HMS Angling permits.* (1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in § 635.4(c)(2). Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel issued a valid Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraph (c)(3) of this section.

(3) A vessel issued an Atlantic Tunas General category permit fishing in a tournament, as authorized under § 635.4(c)(2), shall comply with Atlantic Tunas General category regulations when fishing for, retaining, possessing, or landing Atlantic tunas.

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit issued under paragraph (b) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or a valid HMS Charter/Headboat permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership.

(4) A person can obtain a limited access Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit, other than handgear, for swordfish. Limited access Atlantic Tunas Longline category permits may only be obtained through transfer from current owners consistent with the

provisions under paragraph (l)(2) of this section.

(5) An owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns. In either case, the owner must submit a written request for transfer to NMFS, to an address designated by NMFS, and attach an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine category permits.

(e) *Shark vessel LAPs.* (1) The only valid Federal commercial vessel permits for sharks are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(3) A commercial limited access permit for sharks is not required if the vessel is recreational fishing and retains no more sharks than the recreational retention limit, is operating pursuant to the conditions of a shark EFP, or that fishes exclusively within state waters.

(f) *Swordfish vessel LAPs.* (1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(3) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(4) Unless the owner has been issued a swordfish handgear permit, a limited access permit for swordfish is valid only when the vessel has on board a valid limited access permit for shark and a valid Atlantic Tunas Longline category permit issued for such vessel.

(g) *Dealer permits*—(1) *Atlantic tunas.* A person that receives, purchases, trades for, or barters for Atlantic tunas from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid dealer permit.

(2) *Shark.* A first receiver, as defined in § 635.2, of Atlantic sharks must possess a valid dealer permit.

(3) *Swordfish.* A person that receives, purchases, trades for, or barters for Atlantic swordfish from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid dealer permit.

(h) *Applications for permits.* An owner of a vessel or a dealer must submit to NMFS, at an address designated by NMFS, a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from NMFS.

(1) *Atlantic Tunas, HMS Angling, and HMS Charter/Headboat vessel permits.* (i) An applicant must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An applicant must also submit a copy of the vessel's valid U.S. Coast Guard documentation or, if not documented, a copy of its valid state registration and any other information that may be necessary for the issuance

or administration of the permit as requested by NMFS. The owner must submit such information to an address designated by NMFS.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(7) of this section.

(2) *Limited access permits for swordfish and shark.* See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits.* (i) An applicant for a dealer permit must provide all the information requested on the application form necessary to identify the company, its principal place of business, and mechanisms by which the company can be contacted.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents requested on the application form.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(i) *Change in application information.* A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in writing to NMFS, to an address designated by NMFS with the issuance of each permit. In the case of a vessel permit for Atlantic tunas or an HMS Charter/Headboat permit, the vessel owner or operator must report the change by phone or internet to a number or website designated by NMFS. A new permit will be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. For certain information changes, NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance.* (1) NMFS will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) A vessel owner issued an Atlantic tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit once within 10 calendar days of the date of issuance of the permit. After 10 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season, except during the period of January 1, 2008, through May 31, 2008, when one additional change is authorized.

(k) *Duration.* A permit issued under this section will be valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph (i) of this section.

(l) *Transfer*— (1) *General.* A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish, or tuna longline fishery, in accordance with

paragraph (1)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit, by a copy of a signed bill of sale or equivalent acquisition papers, and the appropriate workshop certificates as specified in § 635.8.

(2) *Shark, swordfish, and tuna longline LAPs.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraphs (l)(2)(ii) or (x) of this section, as applicable, and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii),(iii), and (x) of this section.

(ii) Except as specified in paragraph (l)(2)(x) of this section, an owner may upgrade a vessel with a shark, swordfish, or tuna longline limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial limited access permit or, if applicable, of that vessel's replacement owned as of May 28, 1999.

(B) Subsequent to the issuance of a limited access permit, the vessel's horsepower may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark directed or tuna longline limited access permits have been issued.

(iv) In order to transfer a swordfish, shark or tuna longline limited access permit to a replacement vessel, the owner of the vessel issued the limited access permit must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit to another vessel, subject to requirements specified in paragraphs (l)(2)(ii) or (x) of this section, if applicable. The owner must return the current valid limited access permit to NMFS with a complete application for a limited access permit, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and tuna longline limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or

state registration for limited access permit transfers involving vessels.

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the limited access permit(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a limited access permit(s) who sells the permitted vessel but retains the limited access permit(s) must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the limited access permit(s) to a replacement vessel, he/she must apply according to the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain swordfish for commercial purposes. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas Longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(x) The owner of a vessel that, on August 6, 2007, concurrently possesses, or is eligible to renew, a directed or incidental swordfish limited access permit, a directed or incidental shark limited access permit, and an Atlantic Tunas Longline category permit is eligible to upgrade that vessel, or transfer its limited access permits to another vessel, subject to the following restrictions:

(A) For eligible vessels, as defined in paragraph (l)(2)(x), any increase in the three specifications of vessel size (length overall, gross registered tonnage, and net tonnage), whether through refitting, replacement, or transfer, may not exceed 35 percent of the vessel baseline specifications, as defined in paragraph (l)(2)(ii)(A) of this section. Horsepower for eligible vessels is not limited for purposes vessel upgrades or permit transfers under paragraph (l)(2)(x).

(B) If a vessel owner wants to request a transfer of limited access permits in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x), the transferee must submit a complete application(s), as specified in paragraphs (h),(i),(j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed application(s) are received by NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received after August 6, 2007.

(C) Owners of directed or incidental swordfish limited access permit(s), directed or incidental shark limited access permit(s), and Atlantic Tunas Longline category permit(s) that are not assigned to a specific vessel may request transfer of these permits to a vessel in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x). The transferee must submit complete applications, as specified in paragraphs (h),(i),(j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed applications are received by

NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received by NMFS after August 6, 2007.

(m) *Renewal*—(1) *General*. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraph(l)(2) of this section, all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title, the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section, and the workshop requirements specified in § 635.8 are met.

(2) *Shark and swordfish LAPs*. The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, or that takes or possesses such shark or swordfish as incidental catch, must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37703, July 13, 1999; 65 FR 47238, Aug. 1, 2000; 66 FR 30652, June 7, 2001; 67 FR 77436, Dec. 18, 2002; 68 FR 56787, Oct. 2, 2003; 69 FR 67283, Nov. 17, 2004; 71 FR 45436, Aug. 9, 2006; 71 FR 58164, Oct. 2, 2006; 72 FR 31708, June 7, 2007; 72 FR 33407, June 18, 2007; 73 FR 38153, July 3, 2008; 73 FR 40707, July 15, 2008]

§ 635.5 Recordkeeping and reporting.

Information on HMS vessel and dealer reporting requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *Vessels*—(1) *Logbooks*. If an owner of an HMS charter/headboat vessel, an Atlantic tunas vessel, a shark vessel, or a swordfish vessel, for which a permit has been issued under § 635.4(b), (d), (e), or (f), is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an owner of an HMS charter/headboat vessel, Atlantic tunas vessel, shark vessel, or swordfish vessel, permitted under § 635.4(b), (d), (e), or (f), is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip fishing for Atlantic HMS during that calendar year, and submit the Atlantic Highly Migratory Species Annual Expenditures form(s) postmarked no later than the date specified on the form of the following year.

(2) *Weighout slips*. If an owner of a permitted vessel is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are normally recorded. For fish that are not individually weighed, a weighout

slip must record total weights by species and market category. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or fins must record the weights of carcasses and any detached fins. The owner or operator must also submit copies of weighout slips with the logbook forms required to be submitted under paragraph (a)(1) of this section.

(3) *BFT not sold.* If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, at a number designated by NMFS, immediately upon landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas affixes a dealer tag as required under paragraph (b)(2)(ii) of this section and reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. If a vessel is placed on a trailer, the person must contact a NMFS enforcement agent, or the BFT must have a dealer tag affixed to it by a permitted Atlantic tunas dealer, immediately upon the vessel being removed from the water. All BFT landed but not sold will be applied to the quota category according to the permit category of the vessel from which it was landed.

(4) *Shark gillnet whale reporting.* The vessel operators of vessels that are shark gillnetting, as defined by 50 CFR 229.2, and that have been issued, or are required to have, shark directed or incidental limited access permits for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to contact the NOAA Fisheries Southeast Regional Office, at a number designated by NOAA Fisheries, if a listed whale is taken, in addition to submitting all other reporting forms required by this part and 50 CFR part 229.

(5) *Chartering Arrangements.* (i) For the purposes of this section, a chartering arrangement means any contract, agreement, or commitment between a U.S. vessel owner and a foreign entity (e.g., government, company, person) by which the control, use, possession, or services of a vessel are secured, for a period of time for fishing targeting Atlantic HMS. Chartering arrangements under this part do not include bareboat charters under which a vessel enters into a fishing agreement with a foreign entity, changes registration to fish under another country's registration then, once the agreed-upon fishing is completed, reverts back to the vessel's original registration.

(ii) Before fishing under a chartering arrangement, the owner of a fishing vessel subject to U.S. jurisdiction must apply for, and obtain, a chartering permit as specified in § 635.32 (e) and (f). If a chartering permit is obtained, the vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable quota of the Contracting Party to which the chartering foreign entity is a member and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity or offloaded under the direct supervision of the chartering foreign entity.

(iii) If the chartering arrangement terminates before the expiration of the charter permit, the vessel owner must notify NMFS immediately and in writing, upon termination of the chartering arrangement. Such notification requirements shall also apply to situations where the chartering arrangement is temporarily suspended and during intermittent periods where the vessel may be fishing under U.S. quotas for Atlantic HMS.

(b) *Dealers.* Persons who have been issued a dealer permit under § 635.4 must submit reports to NMFS, to an address designated by NMFS, and maintain records as follows:

(1) *Atlantic HMS.* (i) Dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under § 635.4 must

submit to NMFS all reports required under this section. All reports must be species-specific, must include information about all HMS landed, regardless of where harvested or whether the vessel is federally permitted under § 635.4 and, for sharks, must specify the total shark fin weight separately from the weight of the shark carcass. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in the existing dealer permit being revoked, suspended, or modified, and in the denial of any permit applications.

(ii) Reports of Atlantic tunas, swordfish, and/or sharks received by dealers from U.S. vessels, as defined under § 600.10 of this chapter, on the first through the 15th of each month, must be received by NMFS not later than the 25th of that month. Reports of Atlantic tunas, swordfish, and/or sharks received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month. If a dealer issued an Atlantic tunas, swordfish, or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be received by NMFS for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for bluefin tuna.

(iii) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by a dealer if he or she provides a copy of each appropriate weighout slip or sales record, provided such weighout slip or sales record by itself or combined with the form available from NMFS includes all of the required information and identifies each fish by species.

(iv) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, the dealer must deliver such report for Atlantic tunas, swordfish, or sharks no later than the prescribed received-by date for the reporting period, as required in paragraphs (b)(1)(i) and (ii) of this section.

(2) *Requirements for bluefin tuna*—(i) *Dealer reports*—(A) *Landing reports.* Each dealer with a valid Atlantic tunas permit issued under § 635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) or, once available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the BFT. A landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report and to verify that the vessel permit has not expired.

(B) *Bi-weekly reports.* Each dealer with a valid Atlantic tunas permit under § 635.4 must submit a complete bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS, to be received by NMFS, not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month.

(ii) *Dealer Tags.* NMFS will issue numbered dealer tags to each person issued a dealer permit for Atlantic tunas under § 635.4. A dealer tag is not transferable and is usable only by the dealer to whom it is issued. Dealer tags may not be reused once affixed to a tuna or recorded on a package, container, or report.

(A) *Affixing dealer tags.* A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received from a U.S. vessel immediately upon offloading the BFT. If a vessel is placed on a trailer, the dealer or dealer's agent must affix the dealer tag to the BFT immediately upon the vessel

being removed from the water. The dealer tag must be affixed to the BFT between the fifth dorsal finlet and the caudal keel.

(B) *Removal of dealer tags.* A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported bluefin tuna must remain on the fish until it is cut into portions. If the bluefin tuna or bluefin tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number of the dealer tag or the BSD tag must be written legibly and indelibly on the outside of any package containing the tuna. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna for commercial use or export.

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each report required under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) *Anglers.* All bluefin tuna, billfish, and North Atlantic swordfish non-tournament landings must be reported as specified under paragraphs (c)(1) or (c)(2) of this section, unless an alternative recreational catch reporting system has been established as specified under paragraph (c)(3) of this section. Tournament landings must be reported as specified under paragraph (d) of this section.

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all BFT landings under the Angling category quota designated at § 635.27(a) through the NMFS automated catch reporting system within 24 hours of the landing. Such reports may be made by calling 1–888–872–8862 or by submitting the required information over the Internet at: *www.nmfspermits.com.*

(2) The owner, or the owner(s designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet website designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner(s designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner(s designee, for follow up questions and to confirm the reported landing. Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner(s designee, has received a confirmation number from NMFS or a NMFS designee.

(3) *Alternative recreational catch reporting.* Alternative recreational catch reporting procedures may be established by NMFS with cooperation from states which may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, catch cards, or mandatory check-in stations. A census or a statistical sample of persons fishing under the recreational fishing regulations of this part may be used for these alternative reporting programs (after the programs have received Paperwork Reduction Act approval from OMB). Persons or vessel owners selected for reporting will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting recreational catch. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that recreational landing reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for recreational landing monitoring as required under this part. In such case, NMFS will file with the Office of the Federal Register for publication notification indicating that compliance with the state system satisfies the reporting requirements of paragraph (c) of this section.

(d) *Tournament operators.* For all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, a tournament operator

must register with the NMFS' HMS Management Division, at least 4 weeks prior to commencement of the tournament by submitting information on the purpose, dates, and location of the tournament to NMFS. A tournament is not registered unless the tournament operator has received a confirmation number from the NMFS' HMS Management Division. NMFS will notify the tournament operator in writing when a tournament has been selected for reporting. Tournament operators that are selected to report must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit the completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament, and must attach a copy of the tournament rules.

(e) *Inspection*. Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 or § 635.32 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a permit under this part, or anyone responsible for offloading, storing, packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

(f) *Additional data and inspection*. Additional data on fishing effort directed at Atlantic HMS or on catch of Atlantic HMS, regardless of whether retained, may be collected by contractors and statistical reporting agents, as designees of NMFS, and by authorized officers. A person issued a permit under § 635.4 is required to provide requested information about fishing activity, and a person, regardless of whether issued a permit under § 635.4, who possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS or its designees upon request.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 30653, June 7, 2001; 66 FR 42804, Aug. 15, 2001; 67 FR 45400, July 9, 2002; 67 FR 77437, Dec. 18, 2002; 68 FR 714, Jan. 7, 2003; 68 FR 37773, June 25, 2003; 68 FR 74784, Dec. 24, 2003; 69 FR 67284, Nov. 17, 2004; 69 FR 70399, Dec. 6, 2004; 71 FR 58165, Oct. 2, 2006; 72 FR 56932, Oct. 5, 2007; 73 FR 31389, June 2, 2008; 73 FR 40707, July 15, 2008]

EDITORIAL NOTE: At 73 FR 47851, Aug. 15, 2008, an amendment published announcing an effective date of Sept. 24, 2008 for information collection and recordkeeping requirements in § 635.5(b), amended at 73 FR 35827, June 24, 2008. However, the effectiveness of that amendment was June 24, 2008, and therefore cannot be changed by August 15, 2008 announcement of effectiveness.

§ 635.6 Vessel and gear identification.

(a) *Vessel number*. For the purposes of this section, a vessel's number is the vessel's official number issued by either by the U.S. Coast Guard or by the appropriate state agency.

(b) *Vessel identification*. (1) An owner or operator of a vessel for which a permit has been issued under § 635.4, other than an HMS Angling permit, must display the vessel number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length; at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) in length or less.

(2) The owner or operator of a vessel for which a permit has been issued under § 635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, buoy gear, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

[64 FR 29135, May 28, 1999, as amended at 66 FR 42804, Aug. 15, 2001; 67 FR 77437, Dec. 18, 2002; 71 FR 58166, Oct. 2, 2006]

§ 635.7 At-sea observer coverage.

(a) *Applicability.* NMFS may select for at-sea observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4 or § 635.32. Vessels permitted in the HMS Charter/Headboat and Angling categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 or § 635.32 are required to take observers on a mandatory basis.

(b) *Selection of vessels.* NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples.

(c) *Notification of trips.* The owner or operator of a vessel that is selected under paragraph (b) of this section must notify NMFS, at an address designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements such as expected gear deployment, trip duration and fishing area will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers.* Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel, so long as the waiver is consistent with other applicable laws. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard.

(e) *Requirements.* The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with §§ 600.725 and 600.746 of this chapter and–

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

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

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

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

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

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 17372, Mar. 30, 2001; 68 FR 63741, Nov. 10, 2003]

§ 635.8 Workshops.

(a) *Protected species release, disentanglement, and identification workshops.* (1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected

species before a shark or swordfish limited access vessel permit, pursuant to § 635.4(e) and (f), is renewed in 2007. For the purposes of this section, it is a rebuttable presumption that a vessel fishes with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

(2) NMFS, or its designee, will issue a protected species safe handling, release, and identification workshop certificate to any person who completes a protected species safe handling, release, and identification workshop. If an owner owns multiple vessels, NMFS will issue a certificate for each vessel that the owner owns upon successful completion of one workshop. An owner who is also an operator will be issued multiple certificates, one as the owner of the vessel and one as the operator.

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section, is required to possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid protected species safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish limited access permit.

(4) An operator that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section must possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

(5) All owners and operators that attended and successfully completed industry certification workshops, held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, as documented by workshop facilitators, will automatically receive valid protected species safe handling, release, and identification workshop certificates issued by NMFS no later than December 31, 2006.

(b) *Atlantic shark identification workshops.* (1) As of December 31, 2007, all Federal Atlantic shark dealers permitted or required to be permitted pursuant to § 635.4(g)(2), or a proxy for each place of business as specified in paragraph (b)(4) of this section, must be certified by NMFS, or its designee, as having completed an Atlantic shark identification workshop.

(2) NMFS, or its designee, will issue an Atlantic shark identification workshop certificate to any person who completes an Atlantic shark identification workshop.

(3) Dealers who own multiple businesses and who attend and successfully complete the workshop will be issued a certificate for each place of business that is permitted to receive sharks pursuant to § 635.4(g)(2).

(4) Dealers may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark by way of purchase, barter, or trade. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid Atlantic shark identification workshop certificate at each

place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. A copy of this certificate issued to the dealer or proxy must be included in the dealer's application package to obtain or renew a shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the dealer's permit, a copy of the workshop certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the shark dealer permit renewal application package.

(c) *Terms and conditions.* (1) Certificates, as described in paragraphs (a) and (b) of this section, are valid for three calendar years. All certificates must be renewed prior to the expiration date on the certificate.

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a) of this section, the vessel owner may not renew a shark or swordfish limited access permit, issued pursuant to §635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a) of this section and that has been, or should be, issued a valid limited access permit pursuant to §635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

(4) An Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid Atlantic shark identification workshop certificate. A valid Atlantic shark identification workshop certificate must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to §635.4(g)(2) unless a valid Atlantic shark identification workshop certificate has been submitted with the permit renewal application. If the dealer is not certified, the dealer must submit a copy of a proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade.

(5) A vessel owner, operator, shark dealer, or proxy for a shark dealer who is issued either a protected species workshop certificate or an Atlantic HMS identification workshop certificate may not transfer that certificate to another person.

(6) Vessel owners issued a valid protected species safe handling, release, and identification workshop certificate may request, in the application for permit transfer per §635.4(l)(2), additional protected species safe handling, release, and identification workshop certificates for additional vessels that they own. Shark dealers may request from NMFS additional Atlantic shark identification workshop certificates for additional places of business authorized to receive sharks that they own as long as they, and not a proxy, were issued the certificate. All certificates must be renewed prior to the date of expiration on the certificate.

(7) To receive either the protected species safe handling, release, and identification workshop certificate or Atlantic shark identification workshop certificate, persons required to attend the workshop must show a copy of their HMS permit, as well as proof of identification to NMFS or NMFS' designee at the workshop. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and a copy of the HMS permit to NMFS or NMFS' designee at the workshop. For proxies attending on behalf of a shark dealer, the proxy must have documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer and must show a

copy of the Atlantic shark dealer permit to NMFS or NMFS' designee at the workshop.

[71 FR 58166, Oct. 2, 2006, as amended at 73 FR 38153, July 3, 2008]

Subpart B—Limited Access

§ 635.16 [Reserved]

Subpart C—Management Measures

§ 635.20 Size limits.

(a) *General*. The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4. The LJFL will be the sole criterion for determining the size of whole (head on) North Atlantic swordfish for a vessel that has not been issued a limited access North Atlantic swordfish permit under § 635.4. If the head or tail of an North Atlantic swordfish has been removed prior to or at the time of landing, the CK or minimum weight standard shall be applied in all cases.

(b) *BFT size classes*. The size class of a BFT found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing with the Office of the Federal Register for publication notification of the adjustment.

(c) *BFT, bigeye tuna, and yellowfin tuna*. (1) No person shall take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm) CFL;

(2) Applying the conversion factor from PFCFL to CFL for a beheaded BFT in § 635.20(b) means that no person shall retain or possess a BFT, with the head removed, that is less than 20 inches (51 cm) PFCFL.

(3) No person shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut.

(d) *Billfish*. (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(4) The Atlantic blue and white marlin minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted to sizes between 117 and 138 inches (297.2 and 350.5 cm) and 70 and 79 inches (177.8 and 200.7 cm), respectively, to achieve, but not exceed, the annual Atlantic marlin landing limit specified in § 635.27(d). Minimum size limit increases will be based upon a review of landings, the period of time remaining in the current fishing year, current and historical landing trends, and any other relevant factors. NMFS will adjust the minimum size limits specified in this section by filing an adjustment with the Office of the FEDERAL REGISTER for publication. In no case shall the adjustments be effective less than 14 calendar days after the date of publication. The adjusted minimum size limits will remain in effect through the end of the applicable fishing year or until otherwise adjusted.

(e) *Sharks*. All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins attached. All sharks, except Atlantic sharpnose and bonnethead sharks, landed under the recreational retention limits specified at § 635.22(c) must be at least 54 inches (137 cm) FL.

(f) *Swordfish*. (1) No person shall take, retain, or possess a north or south Atlantic swordfish taken from its management unit that is less than 29 inches (73 cm), CK, 47 inches (119 cm), LJFL, or 33 lb (15 kg) dressed weight. A swordfish that is damaged by shark bites may be retained only if the remainder of the carcass is at least 29

inches (73 cm) CK, 47 inches (119 cm), LJFL, or 33 lb (15 kg) dw. No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(2) Except for a swordfish landed in a Pacific state and remaining in the state of landing, a swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a swordfish statistical document attesting that the swordfish was lawfully imported. Refer to § 300.186 of this title for the requirements related to the swordfish statistical document.

(3) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 42804, Aug. 15, 2001; 68 FR 714, Jan. 7, 2003; 68 FR 74785, Dec. 24, 2003; 69 FR 67284, Nov. 17, 2004; 71 FR 58167, Oct. 2. 2006]

§ 635.21 Gear operation and deployment restrictions.

(a) *All Atlantic HMS fishing gears.* (1) An Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook and not retained, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(3) All vessels that have pelagic or bottom longline gear onboard and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

(4) *Area closures for all Atlantic HMS fishing gears.* (i) No person may fish for, catch, possess, or retain any Atlantic highly migratory species or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas designated at § 622.34(d) of this chapter.

(ii) From November through April of each year until June 16, 2010, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year until June 16, 2010, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling, as specified below under paragraph (a)(4)(iv) of this section.

(iv) For the purposes of paragraph (a)(4)(iii) of this section, surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(b) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (a)(2) of this section, secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except as specified in this paragraph (b), a vessel using or having onboard in the Atlantic Ocean

any unauthorized gear may not possess an Atlantic HMS on board.

(c) *Pelagic longlines.* For purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

(1) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, the vessel may not, at any time, possess or land any pelagic species listed in Table 2 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(2) If pelagic longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calender year;

(ii) In the Charleston Bump closed area from February 1 through April 30 each calendar year;

(iii) In the East Florida Coast closed area at any time;

(iv) In the Desoto Canyon closed area at any time;

(v) In the Northeast Distant gear restricted area at any time, unless persons onboard the vessel comply with the following:

(A) The vessel is limited, at all times, to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10°. The outer diameter of the hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the hook point and the shank (*i.e.*, the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait; and,

(C) Vessels must possess, inside the wheelhouse, a document provided by NMFS entitled, ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must post, inside the wheelhouse, sea turtle handling and release guidelines provided by NMFS; and,

(D) Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section, on the initial list of ''NMFS-Approved Models For Equipment Needed For The Careful Release of Sea Turtles Caught In Hook And Line Fisheries,'' must be carried on board, and must be used in accordance with the handling requirements specified in paragraphs (c)(2)(v)(E) - (G) of this section; and,

(E) Sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board, and to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (c)(2)(v)(C) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1).

(F) *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet approved on the initial list specified in paragraph (c)(2)(v)(D) of this section. All turtles less than 3 ft (.91 m) carapace length

should be boated, if sea conditions permit. A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if the hook has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using approved monofilament line cutters from the initial list specified in paragraph (c)(2)(v)(D) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle using bolt cutters from that list. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, an approved mouth-opener from the initial list specified in paragraph (c)(2)(v)(D) of this section may facilitate opening the turtle's mouth, and an approved gag from that list may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers from the initial list specified in paragraph (c)(2)(v)(D) of this section should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(G) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(v)(C) of this section. Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the initial list specified in paragraph (c)(2)(v)(D) of this section. If the hook can be removed, it must be removed using a long-handled dehooker from the initial list specified in paragraph (c)(2)(v)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic longline gear, the operator of the vessel must immediately release the animal, retrieve the pelagic longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(4) In the Gulf of Mexico: pelagic longline gear may not be fished or deployed from a vessel issued a permit under this part with live bait affixed to the hooks; and, a person aboard a vessel issued a permit under this part that has pelagic longline gear on board shall not maintain live baitfish in any tank or well on board the vessel and shall

not possess live baitfish, and shall not set up or attach an aeration or water circulation device in or to any such tank or well. For the purposes of this section, the Gulf of Mexico includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(5) The operator of a vessel required to be permitted under this part and that has pelagic longline gear on board must undertake the following sea turtle bycatch mitigation measures:

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (c)(5)(i)(L) of this section, must be carried on board, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(5)(ii) of this section.

(A) *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards, and may be purchased or fabricated from readily available and low-cost materials. One long-handled line clipper or cutter and a set of replacement blades are required to be onboard. The minimum design standards for line cutters are as follows:

(*1*) *A protected and secured cutting blade.* The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in. - 0.083 in.) monofilament line (400–lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(*2*) *An extended reach handle.* The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

(B) *Long-handled dehooker for ingested hooks.* A long-handled dehooking device is intended to remove ingested hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device to remove ingested hooks is required onboard. The minimum design standards are as follows:

(*1*) *Hook removal device.* The hook removal device must be constructed of 5/16–inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1 7/8–inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong

enough to facilitate the secure attachment of the hook removal device.

(C) *Long-handled dehooker for external hooks.* A long-handled dehooker is required for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (c)(5)(i)(B) of this section would meet this requirement. The minimum design standards are as follows:

(*1*) *Construction.* A long-handled dehooker must be constructed of 5/16–inch (7.94 mm) 316 L stainless steel rod. A 5–inch (12.7–cm) tube T-handle of 1–inch (2.54 cm) outside diameter is recommended, but not required. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Extended reach handle.* The handle must be a minimum length equal to the freeboard of the vessel or 6 ft (1.83 m), whichever is greater.

(D) *Long-handled device to pull an ''inverted V''.* This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the document entitled ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' required under paragraph (a)(3) of this section, for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'' is required onboard. If a 6–ft (1.83 m) J-style dehooker is used to comply with paragraph (c)(5)(i)(C) of this section, it will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook end.* This device, such as a standard boat hook or gaff, must be constructed of stainless steel or aluminum. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(*2*) *Extended reach handle.* The handle must have a minimum length equal to the freeboard of the vessel, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

(E) *Dipnet.* One dipnet is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet. The minimum design standards for dipnets are as follows:

(*1*) *Size of dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (0.914 m)carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where it is attached to the handle.

(*2*) *Extended reach handle.* The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

(F) *Tire.* A minimum of one tire is required for supporting a turtle in an upright orientation while it is onboard, although an assortment of sizes is recommended to accommodate a range of turtle sizes. The required tire must be a standard passenger vehicle tire, and must be free of exposed steel belts.

(G) *Short-handled dehooker for ingested hooks.* One short-handled device for removing ingested hooks is required onboard. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(*1*) *Hook removal device.* The hook removal device must be constructed of 1/4–inch (6.35 mm) 316 L stainless steel, and must allow the hook to be secured

and the barb shielded without re-engaging during the removal process. It must be no larger than 1 5/16 inch (3.33 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a 3/4 -inch (1.91 cm) inside diameter high impact plastic cylinder (e.g., Schedule 80 PVC) that is 10 inches (25.4 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length.* The handle should be approximately 16 - 24 inches (40.64 cm - 60.69 cm) in length, with approximately a 5–inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(H) *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks is required onboard. The short-handled dehooker for ingested hooks required to comply with paragraph (c)(5)(i)(G) of this section will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook removal device.* The dehooker must be constructed of 5/16–inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length.* The handle should be approximately 16 - 24 inches (40.64 cm - 60.69 cm) long with approximately a 5–inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(I) *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal. They can also hold PVC splice couplings, when used as mouth openers, in place. Minimum design standards are as follows:

(*1*) *General.* They must be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(*2*) [Reserved]

(J) *Bolt cutters.* One pair of bolt cutters is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. Minimum design standards are as follows:

(*1*) *General.* They must be approximately 17 inches (43.18 cm) in total length, with 4–inch (10.16 cm) long blades that are 2 1/4 inches (5.72 cm) wide, when closed, and with 13–inch (33.02 cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to 1/4–inch (6.35 mm) diameter.

(*2*) [Reserved]

(K) *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. Minimum design standards are as follows:

(*1*) *General.* Monofilament line cutters must be approximately 7 1/2 inches (19.05 cm) in length. The blades must be 1 in (4.45 cm) in length and 5/8 in (1.59 cm) wide, when closed, and are recommended to be coated with Teflon (a trademark owned by E.I. DuPont de Nemours and Company Corp.).

(*2*) [Reserved]

(L) *Mouth openers/mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing ingested hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth

openers/gags described below are required:

(*1*) *A block of hard wood*. Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (e.g. maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) 1 inch (2.54 cm) 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(*2*) *A set of three canine mouth gags*. Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches)(12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches)(17.78 cm). They must be constructed of stainless steel. A 1 -inch (4.45 cm) piece of vinyl tubing (3/4–inch (1.91 cm) outside diameter and 5/8–inch (1.59 cm) inside diameter) must be placed over the ends to protect the turtle's beak.

(*3*) *A set of two sturdy dog chew bones*. Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5 1/2 - 8 inches(13.97 cm - 20.32 cm) in length), and one small (3 1/2 - 4 1/2 inches (8.89 cm - 11.43 cm) in length) canine chew bones.

(*4*) *A set of two rope loops covered with hose*. A set of two rope loops covered with a piece of hose can be used as a mouth opener, and to keep a turtle's mouth open during hook and/or line removal. A required set consists of two 3–foot (0.91 m) lengths of poly braid rope (3/8–inch (9.52 mm) diameter suggested), each covered with an 8–inch (20.32 cm) section of 1/2 inch (1.27 cm) or 3/4 inch (1.91 cm) light-duty garden hose, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(*5*) *A hank of rope*. Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6–foot (1.83 m) lanyard of approximately 3/16–inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2 - 4 inches (5.08 cm - 10.16 cm) in thickness.

(*6*) *A set of four PVC splice couplings*. PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1 1/4 inch (3.18 cm), 1 1/2 inch (3.81 cm), and 2 inches (5.08 cm).

(*7*) *A large avian oral speculum*. A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9–inches (22.86 cm) long, and constructed of 3/16–inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16–inch (7.9 mm) outside diameter, 3/16–inch (4.76 mm) inside diameter).

(ii) *Handling and release requirements*. (A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A)–(D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E)–(L) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines

specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1)of this title.

(B) *Boated turtles*. When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as required by paragraph (c)(5)(i)(E) of this section. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit.

(*1*) A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as required by paragraph (c)(5)(i) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using boltcutters as required by paragraph (c)(5)(i) of this section. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as required by paragraph (c)(5)(i) of this section, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers, as required by paragraph (c)(5)(i) of this section, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(*2*) [Reserved]

(C) *Non-boated turtles*. If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear required by paragraphs (c)(5)(i)(A)–(D) of this section must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (a)(3) of this section.

(*1*) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) for additional information.

(*2*) [Reserved]

(iii) *Gear modifications*. The following measures are required of vessel operators to reduce the incidental capture and mortality of sea turtles:

(A) *Gangion length*. The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or

tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) *Corrodible hooks.* Vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must only have corrodible hooks on board.

(C) *Hook size, type, and bait.* Vessels fishing outside of the NED closed area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

(*1*) 18/0 or larger circle hooks with an offset not to exceed 10°; and/or,

(*2*) 16/0 or larger non-offset circle hooks.

(*i*) For purposes of paragraphs (c)(5)(iii)(C)(*1*), and (c)(5)(iii)(C)(*2*) of this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), and the outer diameter of a 16/0 circle hook at its widest point must be no smaller than 1.74 inches (44.3 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.*, the gap) on an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm), and the gap on a 16/0 circle hook must be no larger than 1.01 inches (25.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer.

(*ii*) [Reserved]

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the Federal Register for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use as line clippers or cutters or dehookers, as specified under paragraphs (c)(5)(i)(A), (B), (C), (G), (H), and (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the Federal Register for publication notification of any new devices that are approved as meeting the standards.

(d) *Bottom longlines.* For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of bottom longline gear. Bottom longline vessels may have a limited number of floats and/or high flyers onboard for the purposes of marking the location of the gear but removal of these floats does not constitute removal of bottom longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section with bottom longline gear on board, it is a rebuttable presumption that any fish on board such a vessel were taken with bottom longline in the closed area.

(1) If bottom longline gear is onboard a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) The mid-Atlantic shark closed area from January 1 through July 31 each calendar year;

(ii) The areas designated at § 622.33(a)(1) through (3) of this chapter, year-round; and

(iii) The areas described in paragraphs (d)(1)(iii)(A) through (H) of this section, year-round.

(A) *Snowy Grouper Wreck*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	33°25′	77°04.75′
B	33°34.75′	76°51.3′
C	33°25.5′	76°46.5′
D	33°15.75′	77°00.0′
A	33°25′	77°04.75′

(B) *South Carolina A*. Bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

(C) *Edisto*. Bounded on the north by 32°24′ N. lat.; on the south by 32°18.5′ N. lat.; on the east by 78°54.0′ W. long.; and on the west by 79°06.0′ W. long.

(D) *Charleston Deep Artificial Reef*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°04′	79°12′
B	32°08.5′	79°07.5′
C	32°06′	79°05′
D	32°01.5′	79°09.3′
A	32°04′	79°12′

(E) *Georgia*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	31°43′	79°31′
B	31°43′	79°21′
C	31°34′	79°29′
D	31°34′	79°39′
A	31°43′	79°31′

(F) *North Florida*. Bounded on the north by 30°29′ N. lat.; on the south by 30°19′ N. lat.; on the east by 80°02′ W. long.; and on the west by 80°14′ W. long.

(G) *St. Lucie Hump*. Bounded on the north by 27°08′ N. lat.; on the south by 27°04′ N. lat.; on the east by 79°58′ W. long.; and on the west by 80°00′ W. long.

(H) *East Hump*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°36.5′	80°45.5′
B	24°32′	80°36′
C	24°27.5′	80°38.5′
D	24°32.5′	80°48′
A	24°36.5′	80°45.5′

(2) When a marine mammal, sea turtle, or smalltooth sawfish is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at least 1 nmi (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(3) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(i) *Possession and use of required mitigation gear*. The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(3)(ii) of this section.

(ii) *Handling and release requirements*. Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed under heading D of Table 1 of Appendix A of this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and the fish should be examined for research tags. All smalltooth sawfish must be released in

a manner that will ensure maximum probability of survival, but without removing the fish from the water or any research tags from the fish.

(iii) *Corrodible hooks.* Vessels that have bottom longline gear on board and that have been issued, or required to have, a limited access shark permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, must only have corrodible hooks on board.

(4) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section and has pelagic longline gear onboard, the vessel may not, at any time, possess or land any demersal species listed in Table 3 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(e) *Authorized gear*—(1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks.

(i) *Angling.* Speargun (for BAYS tunas only), and rod and reel (including downriggers)and handline (for all tunas).

(ii) *Charter/Headboat.* Speargun (for recreational BAYS tuna fishery only), and rod and reel (including downriggers), bandit gear, and handline (for all tunas).

(iii) *General.* Rod and reel (including downriggers), handline, harpoon, and bandit gear.

(iv) *Harpoon.* Harpoon.

(v) *Longline.* Longline.

(vi) *Purse Seine.* Purse seine.

(A) *Mesh size.* A purse seine used in directed fishing for BFT must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and must have at least 24–count thread throughout the net.

(B) *Inspection of purse seine vessels.* Persons that own or operate a purse seine vessel conducting a directed fishery for Atlantic tunas must have their fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any BFT after a fishing trip, such persons must request an inspection of the vessel and catch by notifying NMFS. If, after notification by the vessel, NMFS does not arrange to inspect the vessel and catch at offloading, the inspection requirement is waived.

(vii) *Trap.* Pound net and fish weir.

(2) *Billfish.* (i) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess a blue marlin or white marlin in, or take a blue marlin or a white marlin from, its management unit. Blue marlin or white marlin may only be harvested by rod and reel.

(ii) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(iii) After December 31, 2007, persons who have been issued or are required to be issued a permit under this part and

who are participating in a ''tournament'', as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

(3) *Sharks.* (i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a shark LAP under § 635.4 may possess a shark by any gear other than rod and reel, handline, bandit gear, longline, or gillnet. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/headboat permit and a shark LAP may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

(ii) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(f) of this title.

(iv) While fishing for Atlantic sharks with a gillnet, the gillnet must remain attached to at least one vessel at one end, except during net checks.

(v) Both the observer and vessel operator are responsible for sighting whales. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NOAA Fisheries as required in § 635.5(a)(5).

(vi) Vessel operators are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles, marine mammals, or smalltooth sawfish. Smalltooth sawfish should not be removed from the water while being removed from the net.

(4) *Swordfish.* (i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

(ii) An Atlantic swordfish may not be retained or possessed on board a vessel with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from a vessel using or having on board a gillnet.

(iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Only vessels that have been issued, or that are required to have been issued, a valid directed or handgear swordfish LAP under this part may utilize or possess buoy gear. Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable

spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

(f) *Speargun fishing gear*. Speargun fishing gear may only be utilized when recreational fishing for Atlantic BAYS tunas and only from vessels issued either a valid HMS Angling or valid HMS Charter/Headboat permit. Persons fishing for Atlantic BAYS tunas using speargun gear, as specified in paragraph (e)(1) of this section, must be physically in the water when the speargun is fired or discharged, and may freedive, use SCUBA, or other underwater breathing devices. Only free-swimming BAYS tunas, not those restricted by fishing lines or other means, may be taken by speargun fishing gear. ''Powerheads'', as defined at § 600.10 of this chapter, or any other explosive devices, may not be used to harvest or fish for BAYS tunas with speargun fishing gear.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 65 FR 47238, Aug. 1, 2000; 66 FR 8904, Feb. 5, 2001; 66 FR 17372, Mar. 30, 2001; 67 FR 45400, July 9, 2002; 67 FR 47469, July 19, 2002; 68 FR 714, Jan. 7, 2003; 68 FR 74785, Dec. 24, 2003; 69 FR 40754, 40755, July 6, 2004; 69 FR 47797, 47798, Aug. 6, 2004; 71 FR 58167, Oct. 2, 2006; 71 FR 75134, Dec. 14, 2006; 72 FR 5641, Feb. 7, 2007; 72 FR 26741, May 11, 2007; 72 FR 67586, Nov. 29, 2007; 73 FR 38154, July 3, 2008; 73 FR 40708, July 15, 2008]

EFFECTIVE DATE NOTE: At 73 FR 54734, Sept. 23, 2008, § 635.21 was amended by adding the first sentence of introductory text, and paragraphs (c)(5)(iii)(C)(*3*), and (g) and by revising paragraphs (c)(2)(v)(A), and (B), and (e)(1)(ii), (iii), and (v) effective October 23, 2008 and by adding the second sentence of introductory text paragraph (c)(5)(i)(M) and by revising paragraphs (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(ii)(A), and (c)(5)(ii)(C)(*1*), effective January 1, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§ 635.21 Gear operation and deployment restrictions.

The greenstick gear authorization requirements under paragraphs (c)(2)(v)(A), (c)(2)(v)(B), (c)(5)(iii)(C)(*3*), (e)(1)(ii), (e)(1)(iii), (e)(1)(v), and (g) of this section are effective on October 23, 2008. The sea turtle bycatch mitigation gear requirements under paragraphs (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(i)(M), (c)(5)(ii)(A), and (c)(5)(ii)(C)(*1*) of this section are effective on January 1, 2009.

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) The vessel is limited to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (yaxis) and perpendicular to the horizontal axis (xaxis), and the distance between the circle hook point and the shank (i.e., the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyedend, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. If greenstick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 Jhooks. Jhooks may be used only with greenstick gear, and no more than 10 hooks may be used at one time with each greenstick gear. Jhooks used with greenstick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait, except that artificial bait may be possessed and used only with greenstick gear, as defined at § 635.2, if greenstick gear is onboard; and,

* * * * *

(D) Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section, on the list of ''NMFSApproved Models for Equipment Needed for the Careful Release of Sea Turtles Caught In Hook and Line Fisheries,'' must be carried onboard, and must be used in accordance with the handling requirements specified in paragraphs (c)(2)(v)(E) through (G) of this section; and,

* * * * *

(G) *Nonboated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(v)(C) of this section. Nonboated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured, if possible, with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the list specified in paragraph (c)(2)(v)(D) of this section. If the hook can be removed, it must be removed using a longhandled dehooker from the list specified in paragraph (c)(2)(v)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

* * * * *

(5) * * *

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (M) of this section, must be carried onboard, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(5)(ii) of this section.

* * * * *

(M) *Turtle control devices.* Effective January 1, 2009, one turtle control device, as described in paragraph (c)(5)(i)(M)(*1*) or (*2*) of this section, is required onboard and must be used to secure a front flipper of the sea turtle so that the animal can be controlled at the side of the vessel. It is strongly recommended that a pair of turtle control devices be used to secure both front flippers when crew size and conditions allow. Minimum design standards consist of:

(*1*) *Turtle tether and extended reach handle.* Approximately 1520 feet of 1/2inch hard lay negative buoyance line is used to make an approximately 30inch loop to slip over the flipper. The line is fed through a 3/4inch fair lead, eyelet, or eyebolt at the working end of a pole and through a 3/4inch eyelet or eyebolt in the midsection. A 1/2inch quick release cleat holds the line in place near the end of the pole. A final 3/4inch eyelet or eyebolt should be positioned approximately 7inches behind the cleat to secure the line, while allowing a safe working distance to avoid injury when releasing the line from the cleat. The line must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. There is no restriction on the type of material used to construct this handle, as long as it is sturdy. The handle must include a tag line to attach the tether to the vessel to prevent the turtle from breaking away with the tether still attached.

(*2*) *T&G ninja sticks and extended reach handles.* Approximately 3035 feet of 1/2inch to 5/8inch soft lay polypropylene or nylon line or similar is fed through 2 PVC conduit, fiberglass, of similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately 1824 inches of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant 3/4inch schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater.

(ii) * * *

(A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with

the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

* * * * *

(C) * * *

(*1*) Nonboated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a longhandled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title for additional information.

* * * * *

(iii) * * *

(C) * * *

(*3*) If greenstick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 Jhooks. Jhooks may be used only with greenstick gear, and no more than 10 hooks may be used at one time with each greenstick gear. Jhooks used with greenstick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. If greenstick gear is onboard, artificial bait may be possessed, but used only with greenstick gear.

* * * * *

(e) * * *

(1) * * *

(ii) *Charter/Headboat*. Rod and reel (including downriggers), bandit gear, handline, and greenstick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General*. Rod and reel (including downriggers), handline, harpoon, bandit gear, and greenstick.

* * * * *

(v) *Longline*. Longline and greenstick.

* * * * *

(g) *Greenstick gear*. Greenstick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

§ 635.22 Recreational retention limits.

(a) *General*. Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(b) *Billfish*. No longbill spearfish from the management unit may be taken, retained, or possessed shoreward of the outer boundary of the EEZ.

(c) *Sharks*. (1) One of each of the following sharks may be retained per vessel per trip, subject to the size limits described in § 635.20(e): any of the nonridgeback sharks listed under heading A.2 of Table 1 in Appendix A of this part, tiger (*Galeocerdo cuvieri*), blue (*Prionace glauca*), common thresher (*Alopias vulpinus*), oceanic whitetip (*Carcharhinus longimanus*), porbeagle (*Lamna nasus*), shortfin mako (*Isurus oxyricnchus*), Atlantic sharpnose (*Rhizoprionodon terraenovae*), finetooth

(*C. isodon*), blacknose (*C. acronotus*), and bonnethead (*Sphyrna tiburo*).

(2) In addition to the shark listed under paragraph (c)(1) of this section, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel.

(3) No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained regardless of where harvested.

(4) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued an Atlantic incidental or directed shark LAP under § 635.4. If a commercial Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued an Atlantic incidental or directed shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

(d) *Yellowfin tuna*. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons, including captain and crew, aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

(e) *Bluefin tuna*. Refer to § 635.23 for Atlantic bluefin tuna recreational retention limits.

(f) *North Atlantic swordfish*. The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

(1) Vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are charter boats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to six North Atlantic swordfish per vessel per trip.

(2) Vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are headboats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to 15 North Atlantic swordfish per vessel per trip.

(3) Vessels issued an HMS Angling category permit under § 635.4(c), may retain, possess, or land no more than one North Atlantic swordfish per person and up to four North Atlantic swordfish per vessel per trip.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 8904, Feb. 5, 2001; 67 FR 77437, Dec. 18, 2002; 68 FR 714, Jan. 7, 2003; 68 FR 74785, Dec. 24, 2003; 71 FR 58169, Oct. 2, 2006; 72 FR 31709, June 7, 2007; 73 FR 40708, July 15, 2008]

§ 635.23 Retention limits for BFT.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *General category*. (1) No person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the school, large school, or small medium size class.

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and catch-and-release or tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the FEDERAL REGISTER.

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a

vessel that has a General category Atlantic Tunas permit. On days other than RFDs, when the General category is open, no person aboard such vessel may continue to fish, and the vessel must immediately proceed to port once the applicable limit for large medium or giant BFT is retained.

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the FEDERAL REGISTER for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

(b) *Angling category*. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels issued an HMS Angling permit as follows:

(1) *Large medium and giant BFT*. (i) No large medium or giant BFT may be retained, possessed, landed, or sold in the Gulf of Mexico, except one per vessel per year may be landed if caught incidentally to fishing for other species.

(ii) One per vessel per year may be retained, possessed, and landed outside the Gulf of Mexico.

(iii) When a large medium or giant BFT has been caught and retained under this paragraph (b)(1), no person aboard the vessel may continue to fish, the vessel must immediately proceed to port, and no such BFT may be sold or transferred to any person for a commercial purpose.

(2) *School, large school, or small medium BFT*. (i) No school, large school, or small medium BFT may be retained, possessed, landed, or sold in the Gulf of Mexico.

(ii) One school, large school, or small medium BFT per vessel per day may be retained, possessed, or landed outside the Gulf of Mexico. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained.

(3) *Changes to retention limits*. To provide for maximum utilization of the quota for BFT over the longest period of time, NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.27 (a)(8). The retention limits may be adjusted separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the FEDERAL REGISTER for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the FEDERAL REGISTER.

(c) *HMS Charter/Headboat*. Persons aboard a vessel issued an HMS Charter/Headboat permit may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category as follows:

(1) When fishing in the Gulf of Mexico, the restrictions applicable to the Angling category specified in paragraph (b)(1) of this section apply.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed, the restrictions applicable to the Angling category specified in paragraphs (b)(1) through (b)(3) of this section apply.

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has been issued an HMS Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the

first BFT retained will determine the fishing category applicable to the vessel that day.

(d) *Harpoon category*. Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant BFT per day. An incidental catch of only two large medium BFT per vessel per day may be retained, possessed, or landed.

(e) *Purse Seine category*. Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category,

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the total amount of giant BFT landed during that fishing year.

(2) May retain, possess or land BFT smaller than the large medium size class that are taken incidentally when fishing for skipjack tuna or yellowfin tuna in an amount not exceeding 1 percent, by weight, of the skipjack tuna and yellowfin tuna landed on that trip. Landings of BFT smaller than the large medium size class may not be sold and are counted against the Purse Seine category BFT quota allocated to that vessel.

(f) *Longline category*. Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally when fishing for other species. For vessels fishing North or South of 31°00′ N. lat., limits on retention, possession, landing and sale are as follows:

(1) One large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Two large medium or giant BFT per vessel per trip may be landed, provided that at least 6,000 lb (2,727 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Three large medium or giant BFT per vessel per trip may be landed, provided that at least 30,000 lb (13,620 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) NMFS may increase or decrease the Longline category retention limit of large medium and giant BFT over a range from zero to a maximum of three per trip, or, for a given BFT retention limit, increase or decrease the target catch requirement by 25 percent from the level specified in paragraph (f)(1) of this section. Such increase or decrease in the BFT retention limit or target catch requirement will be based on a review of dealer reports, observer reports, vessel logbooks, landing trends, availability of the species on the fishing grounds, and any other relevant factors, and will consider the likelihood of increasing dead discards of BFT and/or exceeding the incidental landings quota established for the pelagic longline fishery. Such adjustments may be made separately for vessels fishing North or South of 31°00′ N. lat. NMFS will adjust the retention limits and target catch requirements specified in paragraph (f)(1) of this section by filing the adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 21 calendar days after the adjustment is filed with the Office of the Federal Register for publication.

(3) Pelagic longline vessels fishing in the Northeast Distant gear restricted area, under the exemption specified at § 635.21(c)(2)(v), may retain all BFT taken incidental to fishing for other species while in that area up to the available quota as specified in § 635.27(a), notwithstanding the retention limits and target catch requirements specified in paragraph (f)(1) of this section. Once the available quota as specified in § 635.27(a) has been attained, the target catch requirements specified in paragraph (f)(1) of this section apply.

(g) *Trap category*. Persons aboard a vessel permitted in the Atlantic Tunas Trap category may retain, possess, land, and sell each fishing year only one large medium or giant BFT that is taken incidentally while fishing for other species with a pound net or fish weir. No other Atlantic tunas caught

in a pound net or fish weir may be retained.

[64 FR 29135, May 28, 1999, as amended at 65 FR 42887, July 12, 2000; 67 FR 77438, Dec. 18, 2002; 68 FR 32417, May 30, 2003; 68 FR 56788, Oct. 2, 2003; 68 FR 74511, Dec. 24, 2003; 69 FR 40758, July 6, 2004; 70 FR 10900, Mar. 7, 2005; 71 FR 58169, Oct. 2, 2006]

§ 635.24 Commercial retention limits for sharks and swordfish.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *Sharks*. (1) A person who owns or operates a vessel that has been issued a valid shark research permit under § 635.32(f) and who has a NMFS-approved observer on board may retain, possess, or land LCS, including sandbar sharks, in excess of the retention limits in paragraphs (a)(2) through (6) of this section. The amount of LCS that can be landed by such a person will vary as specified on the shark research permit. Only a person who owns or operates a vessel issued a valid shark research permit with a NMFS-approved observer on board may retain, possess, or land sandbar sharks.

(2) From July 24, 2008 through December 31, 2012, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 33 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks. As of January 1, 2013, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 36 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land SCS and pelagic sharks if the SCS or pelagic shark fishery is open per § 635.27 and § 635.28. A person who owns or operates a vessel that has been issued an incidental LAP for sharks may retain, possess, or land no more than 16 SCS and pelagic sharks, combined, per trip, if the fishery is open per § 635.27 and § 635.28.

(5) A person who owns or operates a vessel that has been issued an incidental or directed LAP for sharks may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

(6) A person who owns or operates a vessel that has been issued either an incidental or directed LAP for sharks, and who decides to retain sharks, must retain, subject to the trip limits, all dead, legal-sized, non-prohibited sharks that are brought onboard the vessel and cannot replace those sharks with sharks of higher quality or size that are caught later in the trip. Any fish that are to be released cannot be brought onboard the vessel and must be released in the water in a manner that maximizes survival.

(b) *Swordfish*. (1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 30 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat., except as specified in paragraph (b)(2) of this section.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 15 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

[64 FR 29135, May 28, 1999, as amended at 71 FR 58169, Oct. 2, 2006; 72 FR 31709, June 7, 2007; 73 FR 40709, July 15, 2008]

§ 635.25 Fishing areas.

(a) *General*. Persons on board fishing vessels subject to the jurisdiction of the United States are authorized to fish for, catch, retain, or land species governed by an international catch sharing agreement implemented under this part only in or from those management areas for which the United States has received an allocation.

(b) *Exemptions*. Persons and vessels subject to the jurisdiction of the United States intending to fish for regulated species in fishing areas not otherwise authorized under this part, whether for the purposes of scientific research or commercial fishing under a chartering arrangement, must have a permit from NMFS issued under § 635.32.

(c) *Atlantic bluefin tuna*. No person aboard a U.S. fishing vessel shall fish for bluefin tuna in, or possess on board that fishing vessel a bluefin tuna taken from, the Mediterranean Sea.

[67 FR 70026, Nov. 20, 2002]

§ 635.26 Catch and release.

(a) *BFT*. (1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a catch-and-release or tag-and-release program. When fishing under a tag-and-release program, vessel owner/operators should use tags issued or approved by NMFS. If a BFT is tagged, the tag information, including information on any previously applied tag remaining on the fish, must be reported to NMFS. All BFT caught under the catch-and-release or tag-and-release programs must be returned to the sea immediately with a minimum of injury.

(2) Persons may obtain NMFS-issued conventional tags, reporting cards, and detailed instructions for their use from the NMFS Cooperative Tagging Center. Persons may use a conventional tag obtained from a source other than NMFS to tag BFT, provided the use of such tags is registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of a conventional tag from that source. An angler using an alternative source of tags wishing to tag BFT may contact the NMFS Cooperative Tagging Center at the Southeast Fishery Science Center.

(3) An angler registering for the HMS tagging program is required to provide his or her name, address, phone number and, if applicable, the identity of the alternate source of tags.

(b) *Billfish*. NMFS is encouraging further catch and release of Atlantic billfish by establishing a recreational catch-and-release fishery management program, consistent with the guidance of § 600.350(c).

(c) *Sharks*. Notwithstanding the other provisions of this part, a person may fish for white sharks (*Carcharodon carcharias*) with rod and reel, provided the person releases such fish to the sea immediately with a minimum of injury, and that such fish may not be removed from the water.

[64 FR 29135, May 28, 1999, as amended at 65 FR 42887, July 12, 2000; 70 FR 10900, Mar. 7, 2005]

§ 635.27 Quotas.

(a) *BFT*. Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Purse

Seine, Longline, Trap, and Reserve categories. BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The baseline annual U.S. BFT quota is 1,165.1 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. Allocations of the baseline annual U.S. BFT quota are: General - 47.1 percent (548.8 mt); Angling - 19.7 percent (229.5 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (45.4 mt); Purse Seine - 18.6 percent (216.7 mt); Longline - 8.1 percent (94.4 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.2 mt). The remaining 2.5 percent (29.1 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT quotas are specified in whole weight.

(1) *General category quota.* In accordance with the framework procedures of the HMS FMP, NMFS will publish in the FEDERAL REGISTER, prior to the beginning of each fishing year or as early as feasible, the General category effort control schedule, including daily retention limits and restricted-fishing days.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent (548.8 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31 - 5.3 percent (29.1 mt);

(B) June 1 through August 31 - 50 percent (274.4 mt);

(C) September 1 through September 30 - 26.5 percent (145.4 mt);

(D) October 1 through November 30 - 13 percent (71.3 mt); and

(E) December 1 through December 31 - 5.2 percent (28.5 mt).

(ii) NMFS will adjust each period's apportionment based on overharvest or underharvest in the prior period.

(iii) When the coastwide General category fishery has been closed in any quota period specified under paragraph (a)(1)(i) of this section, NMFS will publish a closure action as specified in § 635.28. The subsequent time-period subquota will automatically open in accordance with the dates specified under paragraph (a)(1)(i) of this section.

(2) *Angling category quota.* In accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (229.5 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (5.3 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 4 consecutive-year period (starting in 2007, inclusive), no more than 10 percent of the annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (51.2 mt) of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining school BFT Angling category quota (45.8 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) An amount equal to 52.8 percent (55.6 mt) of the large school/small medium BFT Angling category quota may

be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large school/small medium BFT Angling category quota (49.6 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(iii) An amount equal to 66.7 percent (3.5 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large medium and giant BFT Angling category quota (1.8 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (94.4 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00′ N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23 (f)(3).

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (216.7 mt) of the baseline annual U.S. BFT quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the FEDERAL REGISTER prior to July 1.

(ii) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued must apply in writing to NMFS at an address designated by NMFS, for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on June 1.

(iii) On or about May 1 of each year, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(10)(i) of this section. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (in metric tons) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not affected by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether bluefin tuna are retained.

(iv) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued may apply to NMFS to permanently consolidate Purse Seine category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any purse seine fishery in which BFT might be caught.

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic

Tunas permits is 3.9 percent (45.4 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

(6) *Trap category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.1 percent (1.2 mt) of the baseline annual U.S. BFT quota.

(7) *Reserve*. (i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (29.1 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (22 mt) of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

(8) *Determination criteria*. NMFS will file with the Office of the FEDERAL REGISTER for publication notification of any inseason or annual adjustments. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(ii) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made.

(iii) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(iv) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(v) Effects of the adjustment on BFT rebuilding and overfishing.

(vi) Effects of the adjustment on accomplishing the objectives of the fishery management plan.

(vii) Variations in seasonal distribution, abundance, or migration patterns of BFT.

(viii) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

(ix) Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

(9) *Inseason adjustments*. Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(8) of this section. NMFS may transfer inseason any portion of the remaining quota of a fishing category to any other fishing category or to the reserve as specified in paragraph (a)(7) of this section.

(10) *Annual adjustments*. (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota for any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year. These adjustments would be made provided that the underharvest being carried forward does not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted category quotas and the reserve are consistent with ICCAT recommendations. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the

following fishing year. Purse seine vessel adjustments would take place provided that the underharvest being carried forward does not exceed 100 percent of the purse seine category baseline allocation. Any of the unharvested quota amounts being carried forward, as described in this paragraph, that exceed the 100 percent limit will be transferred to the reserve, or another domestic quota category provided the transfers are consistent with paragraph (a)(8) of this section.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(8) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4 consecutive-year period beginning in the 2007 fishing year does not exceed 10 percent by weight of the total annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, for that period.

(iv) NMFS may subtract the best available estimate of dead discards from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards.

(v) NMFS will file any annual adjustment with the Office of the FEDERAL REGISTER for publication and specify the basis for any quota reductions or increases made pursuant to this paragraph (a)(10).

(b) *Sharks*—(1) *Commercial quotas*. The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks taken and landed from state waters, even by fishermen without Federal shark permits, must be counted against the fishery quota. Commercial quotas are specified for each of the management groups of sandbar sharks, non-sandbar LCS, SCS, blue sharks, porbeagle sharks, and pelagic sharks other than blue or porbeagle sharks. Any sharks landed as unclassified will be counted against the appropriate species' quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32.

(i) *Fishing seasons*. The fishing season for sandbar sharks, non-sandbar LCS, small coastal sharks, and all pelagic sharks will begin on January 1 and end on December 31.

(ii) *Regions*. (A) The commercial quotas for non-sandbar LCS are split between two regions: the Gulf of Mexico and the Atlantic. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

(B) Except for non-sandbar LCS landed by a vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported by dealers located in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by a vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported by dealers located in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

(iii) *Sandbar sharks*. The base annual commercial quota for sandbar sharks is 116.6 mt dw. However, from July 24,

2008 through December 31, 2012, to account for overharvests that occurred in 2007, the adjusted base quota is 87.9 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(vii) of this section. This quota is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(iv) *Non-sandbar LCS*. The total base quota for non-sandbar LCS is 677.8 mt dw. This base quota is split between the two regions and the shark research fishery as follows: Gulf of Mexico = 439.5 mt dw; Atlantic = 188.3 mt dw; and Shark Research Fishery = 50 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the total adjusted base quota is 615.8 mt dw. This adjusted base quota is split between the regions and the shark research fishery as follows: Gulf of Mexico = 390.5 mt dw; Atlantic = 187.8 mt dw; and Shark Research Fishery = 37.5 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(vii) of this section.

(v) *Small coastal sharks*. The base annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vii) of this section.

(vi) *Pelagic sharks*. The base annual commercial quotas for pelagic sharks are 273 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488 mt dw for pelagic sharks other than blue sharks or porbeagle sharks, unless adjusted pursuant to paragraph (b)(1)(vii) of this section.

(vii) *Annual adjustments*. NMFS will publish in the FEDERAL REGISTER any annual adjustments to the base annual commercial quotas or the 2008 through 2012 adjusted base quotas. The base annual quota and the adjusted base annual quota will not be available, and the fishery will not open, until such adjustments are published and effective in the FEDERAL REGISTER.

(A) *Overharvests*. If the available quota for sandbar sharks, small coastal, porbeagle shark, and pelagic sharks other than blue or porbeagle sharks is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. If the annual quota in a particular region or in the research fishery for non-sandbar LCS is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years.

(B) *Underharvests*. If an annual quota for sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks other than blue or porbeagle is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery depending on the status of the stock or quota group. If the stock (e.g., sandbar shark, porbeagle shark, pelagic shark, or blue shark) or specific species within a quota group (e.g., non-sandbar LCS or SCS) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012). If the stock is not declared to be overfished, to have overfishing occurring, or to

have an unknown status, NMFS may increase the following year's base annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012) by an equivalent amount of the underharvest up to 50 percent above the base annual quota. For the non-sandbar LCS fishery, underharvests are not transferable between regions and/or the research fishery.

(2) *Public display and non-specific research quota.* The base annual quota for persons who collect non-sandbar LCS, SCS, pelagic sharks, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw). The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt ww (1 mt dw) and under an EFP is 1.4 mt ww (1 mt dw). No persons may collect dusky sharks under a display permit or EFP. All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against these quotas.

(c) *Swordfish*—(1) *Categories.* Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking swordfish recreationally, and a reserve category.

(i) *North Atlantic swordfish.* (A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued or is required to be issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for each fishing year. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 1,468.8 mt dw: one for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish or an HMS Angling or Charter/Headboat permit has been issued, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued, is counted against the incidental catch quota.

(C) All swordfish discarded dead from U.S. fishing vessels, regardless of whether such vessels are permitted under this part, shall be counted against the annual directed fishing quota.

(D) A portion of the total allowable catch of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, for transfer to another ICCAT contracting party, or for other purposes consistent with management objectives.

(E) In the event of an overharvest of South Atlantic swordfish, up to 150.4 mt dw of swordfish landed between 5 degrees North and 5 degrees South latitude may be applied against the North Atlantic swordfish quota. Otherwise, swordfish landed from this area shall be applied against the South Atlantic swordfish quota. For example, if the South Atlantic swordfish quota were 100 mt dw, and 50 mt dw were landed between 5 degrees North and 5 degrees South latitude, and 75 mt dw were caught south of 5 degrees South latitude, then 25 mt dw of the swordfish caught between 5 degrees North and 5 degrees South latitude would be applied against the North Atlantic swordfish quota. If only 25 mt dw of swordfish were caught between 5 degrees North and 5 degrees South latitude, and 150 mt dw of swordfish were caught south of 5 degrees South latitude, 25 mt dw would be applied against the North Atlantic swordfish quota. The remaining 50 mt dw overharvest would be counted against the following year's South Atlantic swordfish quota.

(ii) *South Atlantic Swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock is 75.2

mt dw. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 37.6 mt dw: one for January 1 through June 30, and the other for July 1 through December 31. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and that have been issued a directed fishery permit for swordfish. No person may retain swordfish caught incidental to other fishing activities or with other fishing gear in the Atlantic Ocean south of 5 degrees North latitude.

(2) *Inseason adjustments.* (i) NMFS may adjust the July 1 through December 31 semiannual directed fishery quota or, as applicable, the reserve category, to reflect actual directed fishery and incidental fishing category catches during the January 1 through June 30 semiannual period.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quota or to the reserve.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual fishing season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual season will be used to adjust the annual incidental catch quota or the reserve as necessary to maintain landings and discards within the required annual limits.

(iv) NMFS will file with the Office of the FEDERAL REGISTER for publication any inseason swordfish quota adjustment and its apportionment to fishing categories or to the reserve made under paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year(s quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 50 percent of the baseline quota allocation for that year. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category. NMFS will file with the Office of the FEDERAL REGISTER for publication any adjustment made under this paragraph (c)(3)(iii).

(d) *Atlantic blue and white marlin.* (1) Effective January 1, 2007, and consistent with ICCAT recommendations and domestic management objectives, NMFS will establish the annual landings limit of Atlantic blue and white marlin to be taken, retained, or possessed by persons and vessels subject to U.S. jurisdiction. For the year 2007 and thereafter, unless adjusted under paragraph (d)(2) of this section or by ICCAT recommendation, this annual landings limit is 250 Atlantic blue and white marlin, combined. Should the U.S. recreational Atlantic marlin landing limit be adjusted by an ICCAT recommendation, NMFS will file a notice identifying the new landing limit with the Office of the FEDERAL REGISTER for publication prior to the start of the next fishing year or as early as possible.

(2) Consistent with ICCAT recommendations and domestic management objectives, and based on landings statistics and other information as appropriate, if NMFS determines that aggregate landings of Atlantic blue and white marlin exceeded the annual landings limit for a given fishing year, as

established in paragraph (d)(1) of this section, NMFS will subtract any overharvest from the landings limit for the following fishing year. Additionally, if NMFS determines that aggregate landings of Atlantic blue and white marlin were below the annual landings limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS may add any underharvest, or portion thereof, to the landings limit for the following fishing year. Such adjustments to the annual recreational marlin landings limit, as specified in paragraph (d)(1) of this section, if necessary, will be filed with the Office of the FEDERAL REGISTER for publication prior to the start of the next fishing year or as early as possible.

(3) When the annual marlin landings limit specified in paragraph (d)(1) or, if adjusted, as specified in paragraph (d)(2) of this section is reached or projected to be reached, based upon a review of landings, the period of time remaining in the current fishing year, current and historical landings trends, and any other relevant factors, NMFS will file for publication with the Office of the FEDERAL REGISTER an action restricting fishing for Atlantic blue and white marlin to catch-and-release fishing only. In no case shall such adjustment be effective less than 14 calendar days after the date of publication. From the effective date and time of such action until additional landings become available, no blue or white marlin from the management unit may be taken, retained, or possessed.

[64 FR 29135, May 28, 1999, as amended at 64 FR 58796, Nov. 1, 1999; 65 FR 42887, July 12, 2000; 65 FR 77526, Dec. 12, 2000; 66 FR 8904, Feb. 5, 2001; 66 FR 42805, Aug. 15, 2001; 66 FR 67121, Dec. 28, 2001; 67 FR 70026, Nov. 20, 2002; 67 FR 77438, Dec. 18, 2002; 68 FR 32417, May 30, 2003; 68 FR 56788, Oct. 2, 2003; 68 FR 74511, 74785, Dec. 24, 2003; 69 FR 40758, July 6, 2004; 69 FR 68093, Nov. 23, 2004; 69 FR 69544, Nov. 30, 2004; 71 FR 29089, May 19, 2006; 71 FR 58169, Oct. 2, 2006; 72 FR 20772, Apr. 26, 2007; 72 FR 33407, June 18, 2007; 72 FR 56933, Oct. 5, 2007; 73 FR 40709, July 15, 2008]

§ 635.28 Closures.

(a) *BFT*. (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file a closure notice with the Office of the FEDERAL REGISTER for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) From the commencement date of the directed BFT purse seine fishery, as provided under § 635.27(a)(4)(i), through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following BFT fishing season. Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year.

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are available, e.g., BFT have migrated into the area or weather is conducive for fishing. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(8).

(b) *Sharks*. (1) If quota is available as specified by a publication in the FEDERAL REGISTER, the commercial fisheries for sandbar shark, non-sandbar LCS, SCS, porbeagle sharks, blue sharks, and pelagic sharks other than blue or porbeagle sharks will remain open as specified at § 635.27(b)(1).

(2) When NMFS calculates that the fishing season landings for sandbar shark, non-sandbar LCS, SCS, blue sharks, porbeagle sharks, or pelagic sharks other than blue or porbeagle sharks has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the FEDERAL REGISTER, that additional quota is available and the season is reopened, the fishery for the shark species group and, for non-sandbar LCS, region is closed, even across fishing years.

(3) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued an Atlantic Shark LAP pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and an NMFS-approved observer is onboard. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species group and/or region from a vessel issued an Atlantic Shark LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Additionally, a permitted shark dealer or processor may possess non-sandbar sharks that were harvested by a vessel issued a valid shark research permit with a NMFS-approved observer onboard as long as the non-sandbar shark research fishery is open. Under a closure for a shark species group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued a Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, a shark dealer, issued a permit pursuant, to § 635.4 may purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

(c) *Swordfish*—(1) *Directed fishery closure.* When the annual or semiannual directed fishery quota specified in § 635.27(c)(1)(i) or (ii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure at least 14 days before the effective date. From the effective date and time of the closure until additional directed fishery quota becomes available, the directed fishery for the appropriate stock is closed and the following catch limits apply:

(i) When the directed fishery for the North Atlantic swordfish stock is closed,

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a pelagic longline. However, North Atlantic swordfish legally taken prior to the effective date of the closure may be possessed in the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel with a pelagic longline on board, provided the harvesting vessel does no fishing after the closure in the Atlantic Ocean north of 5 N. lat., and reports positions with a vessel monitoring system, as specified in § 635.69. Additionally, legally taken swordfish from the South Atlantic swordfish stock may be possessed or landed north of 5 N. lat. provided the harvesting vessel does no fishing on that trip north of 5 N. lat., and reports positions with a vessel monitoring system as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the Federal Register for publication notification of the change at least 14 days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate

of catch by vessels fishing under the incidental catch quota.

(B) No more than 2 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel that has been issued a handgear permit under § 635.4(f)(1) provided that such swordfish were not taken with a harpoon.

(ii) When the directed fishery for the South Atlantic swordfish stock is closed, swordfish from that stock taken incidental to fishing for other species may not be retained.

(2) *Incidental catch closure*. When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until additional incidental catch quota becomes available, no swordfish may be landed in an Atlantic coastal state, or be possessed or sold in or from the Atlantic Ocean north of 5° N. lat. unless the directed fishery is open and the appropriate permits have been issued to the vessel. In the event of a directed and incidental North Atlantic swordfish category closure, South Atlantic swordfish may be possessed in the Atlantic Ocean north of 5° N. lat. and/or landed in an Atlantic coastal state on a vessel with longline gear onboard, provided that the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat., the fish were taken legally from waters of the Atlantic Ocean south of 5° N. lat., and the harvesting vessel reports positions with a vessel monitoring system as specified in § 635.69.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 66 FR 67121, Dec. 28, 2001; 67 FR 77438, Dec. 18, 2002; 68 FR 63741, Nov. 10, 2003; 68 FR 74511, 74786, Dec. 24, 2003; 71 FR 58172, Oct. 2, 2006; 72 FR 56933, Oct. 5, 2007; 73 FR 40710, July 15, 2008]

§ 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, blue marlin, white marlin, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was harvested. However, an owner or operator of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine category Atlantic Tunas permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

(b) Persons may not transfer a shark or a sailfish at sea shoreward of the outer boundary of the EEZ, regardless of where the shark was harvested, and persons may not transfer at sea a shark or a sailfish taken shoreward of the outer boundary of the EEZ, regardless of where the transfer takes place.

§ 635.30 Possession at sea and landing.

(a) *Atlantic tunas*. Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

(b) *Billfish*. Any person that possesses a blue marlin or a white marlin taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin or a white marlin in an Atlantic coastal port must maintain such billfish with its head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole.

(c) *Shark*. (1) Notwithstanding the regulations issued at part 600, subpart N of this chapter, a person who owns or operates a vessel issued a Federal Atlantic commercial shark LAP must maintain all the shark fins including the tail on the shark carcass until the shark has been offloaded from the vessel. While sharks are on board and when sharks are being offloaded, persons issued a Federal Atlantic commercial shark LAP are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark LAP must maintain

the shark intact through offloading except that the shark may be dressed. All fins, including the tail, must remain naturally attached to the shark through offloading. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains naturally attached to the carcass via at least a small portion of uncut skin. The fins and tail may only be removed from the carcass once the shark has been landed and offloaded.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark LAP and who lands sharks in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with regulations at part 600, subpart N, of this chapter. Persons may not possess any shark fins not naturally attached to a shark carcass on board a fishing vessel at any time.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing with the head, tail, and all fins attached. The shark may be bled.

(d) *Swordfish*. Persons that own or operate a fishing vessel that possesses a swordfish in the Atlantic Ocean or lands a swordfish in an Atlantic coastal port must maintain such swordfish in round or dressed form through offloading.

[64 FR 29135, May 28, 1999, as amended at 67 FR 6201, Feb. 11, 2002; 69 FR 53362, Sept. 1, 2004; 71 FR 58173, Oct. 2, 2006; 73 FR 40711, July 15, 2008]

§ 635.31 Restrictions on sale and purchase.

(a) *Atlantic tunas*. (1) A persons that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas issued under this part in the appropriate category.

(3) Dealers or seafood processors may not purchase or sell a BFT smaller than the large medium size class unless it is lawfully imported and is accompanied by a bluefin tuna statistical document, as specified in § 300.185(a) of this title.

(4) A BFT in the possession of a dealer or seafood processor is deemed to be from the Atlantic Ocean. However, a BFT will not be deemed to be from the Atlantic Ocean if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a bluefin tuna statistical document, as specified in § 300.185(a) of this title.

(b) *Billfish*. (1) Persons may not sell or purchase a billfish taken from its management unit.

(2) A billfish or a closely related species, namely, black marlin, *Makaira indica*, striped marlin, *Tetrapturus audax*, or shortbill spearfish, *Tetrapturus angustirostris*, or a part thereof, in the possession of a dealer or seafood processor is considered, for purposes of this part, to be a billfish from the Atlantic Ocean management unit. However, a billfish or a closely related species will not be considered to be from the Atlantic Ocean management unit if–

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a Billfish Certificate of Eligibility (COE) form, obtained from NMFS, or its equivalent that documents that the fish was harvested from other than the Atlantic Ocean management unit.

(A) The Billfish COE required under this section must indicate, in English,

the name and homeport of the harvesting vessel, and the date and port of offloading. Only the purchaser of the billfish from the harvesting vessel must complete this information.

(B) The Billfish COE must be signed and dated by each dealer in possession of the product throughout the chain of custody up to but not including the consumer. This signature indicates a declaration that the billfish were not harvested from the management unit.

(C) A Billfish COE may refer to billfish taken from only one harvesting vessel. If a shipment contains billfish taken from more than one vessel, a separate billfish COE must accompany the shipment for each harvesting vessel.

(D) A model Billfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all of the information required under this section.

(3) For the purposes of this paragraph, a dealer or seafood processor means any individual, other than a consumer, who engages in any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species or parts thereof and activities conducted for the purpose of facilitating such buying and selling.

(c) *Shark*. (1) Persons that own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess and sell a shark only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(2) Persons that own or operate a vessel for which a valid commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell such shark only to a dealer that has a valid permit for shark issued under this part.

(3) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter and in § 635.30(c).

(4) Only dealers that have a valid shark dealer permit may purchase shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial shark permit issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(5) A dealer issued a permit under this part may not purchase from an owner or operator of a fishing vessel shark fins that were not harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(d) *Swordfish*. (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may sell such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Dealers may purchase a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part.

[64 FR 29135, May 28, 1999, as amended at 67 FR 6201, Feb. 11, 2002; 67 FR 77438, Dec. 18, 2002; 68 FR 715, Jan. 7, 2003; 69 FR 53362, Sept. 1, 2004; 69 FR 67284, Nov. 17, 2004; 71 FR 58173; Oct. 2, 2006; 73 FR 40711, July 15, 2008]

§ 635.32 Specifically authorized activities.

(a) *General*. (1) Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize activities otherwise prohibited by the regulations contained in this part for the conduct of scientific research, the acquisition of

information and data, the enhancement of safety at sea, the purpose of collecting animals for public education or display, the investigation of bycatch, economic discard and regulatory discard, or for chartering arrangements.

(2) Activities subject to the provisions of this section include, but are not limited to: scientific research resulting in, or likely to result in, the take, harvest, or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, EFP, scientific research permit, display permit, chartering permit, or shark research permit issued in response to requests for authorization under this section.

(3) For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization.

(4) Inspection requirements specified in § 635.5(e) apply to the owner or operator of a fishing vessel that has been issued an exempted fishing permit, scientific research permit, display permit, or chartering permit.

(b) *Scientific research activities.* For the purposes of all species covered under this part regulated under the authority of ATCA, the provisions for research plans under § 600.745(a) and reports under § 600.745(c)(1) of this chapter are mandatory. In such cases of authorized scientific research activities, NMFS shall issue scientific research permits. For scientific research activities involving the capture of Atlantic sharks, research plans and reports are requested; letters of acknowledgment shall be issued by NMFS as indicated under § 600.745(a) of this chapter.

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits.

(2) [Reserved]

(d) *Display permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue display permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid display permit is required to fish for, take, retain, or possess an HMS in or from the Atlantic EEZ for the purposes of public display. A valid display permit must be on board the harvesting vessel, must be available when the fish is landed, must be available when the fish is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A display permit is valid for the specific time, area, gear, and species specified on it. Species landed under a display permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the display permit.

(3) To be eligible for a display permit, a person must provide all information concerning his or her identification, numbers by species of HMS to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Collectors of HMS for public display must notify the local NMFS Office for Law Enforcement at least 24 hours, excluding weekends and holidays, prior to departing on a collection trip, regardless of whether the fishing activity will occur in or outside the EEZ, as to collection plans and location and the number of animals to be collected. In the event that a NMFS agent is not available, a message may be left.

(5) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time

of the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(e) *Chartering permits.* (1) For activities consistent with the purposes of this section, § 635.5(a), and § 600.745(b)(1) of this chapter, NMFS may issue chartering permits for record keeping and reporting purposes. An application for a chartering permit must include all information required under § 600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the Contracting Party of which the chartering foreign entity is a member; duration of the arrangement; measures adopted by the chartering Contracting Party of which the foreign entity is a member to implement ICCAT chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering Contracting Party of which the foreign entity is a member for the vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to 50 CFR 300.10; documentation regarding interactions with protected resources; and documentation regarding the legal establishment of the chartering company. To be considered complete, an application for a chartering permit for a vessel must include all information specified in § 600.745(b)(2) of this chapter and in § 635.32(e) and (f).

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess ICCAT- regulated species under chartering arrangements as specified in § 635.5(a)(6). A valid chartering permit must be on board the harvesting vessel, must be available when ICCAT-regulated species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes first. Vessels issued a chartering permit shall not be authorized to fish under applicable Atlantic Highly Migratory Species quotas or entitlements of the United States until the chartering permit expires or is terminated.

(3) Charter permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, as well as ICCAT recommendations.

(4) Observers may be placed on board vessels issued chartering permits as specified under § 635.7.

(5) NMFS will issue a chartering permit only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

(6) A vessel shall be authorized to fish under only one chartering arrangement at a time.

(7) All chartering permits are subject to sanctions and denials as indicated under § 635.4(a)(6).

(f) *Shark research permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue shark research permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark research permit is required to fish for, take, retain, or possess Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a). A valid shark research permit must be on board the harvesting vessel, must be available for inspection when the shark is landed, and must be presented for inspection upon request of an authorized officer. A shark research permit is only valid for the vessel and owner(s) combination specified and cannot be transferred to another vessel or owner(s). A shark research permit is only valid for the retention limits, time, area, gear specified, and other terms and conditions as listed on the permit and only when a

NMFS-approved observer is onboard. Species landed under a shark research permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the shark research permit.

(3) Regardless of the number of applicants, NMFS will issue only a limited number of shark research permits depending on available quotas as described in § 635.27, research needs for stock assessments and other scientific purposes, and the number of sharks expected to be harvested by vessels issued LAPs for sharks.

(4) In addition to the workshops required under § 635.8, persons issued a shark research permit, and/or operators of vessels specified on the shark research permit, may be required to attend other workshops (e.g., shark identification workshops, captain's meeting, etc.) as deemed necessary by NMFS to ensure the collection of high quality data.

(5) Issuance of a shark research permit does not guarantee the permit holder that a NMFS-approved observer will be deployed on any particular trip. Rather, permit issuance indicates that a vessel is eligible for a NMFS-approved observer to be deployed on the vessel for a particular trip and that, on such observed trips, the vessel may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a).

(6) The shark research permit may be revoked, limited, or modified at any time, does not confer any right to engage in activities beyond those authorized by the permit, and does not confer any right of compensation to the holder.

(g) *Applications and renewals.* (1) Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, chartering, and shark research activities and to solicit public comment on anticipated EFP, scientific research permit, letter of acknowledgment, public display, chartering, or shark research permit activities. Applications for EFPs, scientific research permits, public display permits, chartering permits, or shark research permits are required to include all reports specified in the applicant's previous permit including, if applicable, the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent reports, applications will be deemed incomplete and a permit will not be issued under this section.

(2) For the shark research permit, NMFS will publish annually, in a FEDERAL REGISTER notice(s), a description for the following fishing year of the expected research objectives. This description may include information such as the number of vessels needed, regions and seasons for which vessels are needed, the specific criteria for selection, and the application deadline. Complete applications, including all information requested in the applicable FEDERAL REGISTER notice(s) and on the application form and any previous reports required pursuant to this section and § 635.5, must be received by NMFS by the application deadline in order for the vessel to be considered. Requested information could include, but is not limited to, applicant name and address, permit information, vessel information, availability of the vessel, past involvement in the shark fishery, and compliance with HMS regulations including observer regulations. NMFS will only review complete applications received by the published deadline to determine eligibility for participation in the shark research fishery. Qualified vessels will be chosen based on the information provided on the applications and their ability to meet the selection criteria as published in the FEDERAL REGISTER notice. A commercial shark permit holder whose vessel was selected to carry an observer in the previous two years for any HMS fishery but failed to comply with the observer regulations specified in § 635.7 will not be considered. A commercial shark permit holder that has been charged criminally or civilly (i.e., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS related violation will not

be considered for participation in the shark research fishery. Qualified vessels will be randomly selected to participate in the shark research fishery based on their availability and the temporal and spatial needs of the research objectives. If a vessel issued a shark research permit cannot conduct the shark research tasks, for whatever reason, that permit will be revoked and, depending on the status of the research and the fishing year, NMFS will randomly select another qualified vessel to be issued a shark research permit.

(h) *Terms and conditions.* (1) For EFPs, scientific research permits, and public display permits: Written reports on fishing activities, and disposition of all fish captured under a permit issued under this section must be submitted to NMFS within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Consolidated HMS Fishery Management Plan, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a ''no-catch'' report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be submitted to NMFS by a date specified, and to an address designated, in the terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities, and disposition of all fish captured, under the permit must be submitted to NMFS for all EFPs, scientific research permits, display permits, and chartering permits issued under this section within 30 days after the expiration date of the permit.

(4) For shark research permits, all owners and/or operators must comply with the recordkeeping and reporting requirements specified in § 635.5 per the requirement of holding a LAP for sharks.

(5) As stated in § 635.4(a)(6), failure to comply with the recordkeeping and reporting requirements of this section could result in the EFP, scientific research permit, display permit, chartering permit, or shark research permit being revoked, suspended, or modified, and in the denial of any future applications.

[64 FR 29135, May 28, 1999, as amended at 68 FR 63742, Nov. 10, 2003; 68 FR 74786, Dec. 24, 2003; 69 FR 70399, Dec. 6, 2004; 73 FR 40711, July 15, 2008]

§ 635.33 Archival tags.

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain written authorization from NMFS pursuant to § 635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS at an address designated by NMFS, indicating the type and number of tags, the species and approximate size of the fish as well as any additional information requested in the authorization.

(b) *Landing.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been implanted or affixed, provided such persons comply with the requirements of paragraph (c) of this section.

(c) *Landing report.* Persons that retain an Atlantic HMS that has an archival tag must contact NMFS, prior to or at the time of landing; furnish all requested information regarding the location and method of capture; and, as instructed, remove the archival tag and return it to NMFS or make the fish available for inspection and recovery of the tag by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

(d) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (b) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve quota established for that species.

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23; the quotas for BFT, shark and swordfish,

as specified in § 635.27; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue and white marlin, as specified in § 635.20.

(b) In accordance with the framework procedures in the Highly Migratory Species Fishery Management Plan, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

(c) NMFS may add species to the prohibited shark species group specified in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in the appropriate shark species group in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

(1) Biological information indicates that the stock warrants protection.

(2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries.

(3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS.

(4) The species is difficult to distinguish from other prohibited species.

(d) When considering a framework adjustment to add, change, or modify time/area closures, NMFS will consider, consistent with the FMP, the Magnuson-Stevens Act, and other applicable law, but is not limited to, the following criteria: any Endangered Species Act related issues, concerns, or requirements, including applicable BiOps; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the U.S.'s catch on that species before implementing time/area closures.

[64 FR 29135, May 28, 1999, as amended at 68 FR 74788, Dec. 24, 2003; 71 FR 58173, Oct. 2, 2006]

Subpart D—Restrictions on Imports

§ 635.40 Restrictions to enhance conservation.

(a) *Determinations*. Upon a determination by NMFS that species of fish subject to regulation or under investigation by ICCAT are ineligible for entry into the United States under 16 U.S.C. 971d (c)(4) or (c)(5), NMFS, with the concurrence of the Secretary of State, will file with the Office of the Federal Register for publication a finding to that effect. Effective upon the date of filing of such finding, all shipments of fish in any form of the species found to be ineligible will be denied entry unless, with respect to a particular shipment, it is established by satisfactory proof pursuant to paragraph (b) of this section that the particular shipment of fish is eligible for entry. Entry will not

be denied and no such proof will be required for any such shipment that, on the date of filing was in transit to the United States on board a vessel operating as a common carrier.

(b) *Proof of admissibility*. (1) For the purposes of paragraph (a) of this section and section 6(c) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding filed with the Office of the Federal Register for publication under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed ATCA COE attached to the invoice certifying that the fish in the shipment:

(i) Are not of the species specified in the finding;

(ii) Are of the species named in the finding, but were not taken in the regulatory area; or

(iii) Are of the species named in the finding, but are products of an American fishery and were lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the finding solely for transshipment.

(2) If the fish are offered for entry under paragraph (b)(1)(i) or (b)(1)(ii) of this section, the ATCA COE must be executed by a duly authorized official of the country named in the finding and the ATCA COE must be validated by a consular officer or consular agent of the United States. Such validation must be attached to the ATCA COE.

(3) If the fish are offered for entry under paragraph (b)(1)(iii) of this section, the ATCA COE must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The ''Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries'' required by 19 CFR 10.79 must contain a further statement as follows: ''We further declare that the said fish were caught by us in full compliance with part 635, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress.''

(c) *Removal of import restrictions*. Upon a determination by NMFS that the conditions no longer exist that warranted the finding under paragraph (a) of this section, NMFS will remove the import restriction by filing with the Office of the Federal Register for publication notification of removal effective on the date of filing. However, for 1 year from the date of filing every shipment of fish in any form that was subject to the finding under paragraph (a) of this section will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

§ 635.41 Products denied entry.

(a) All shipments of Atlantic bigeye tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Bolivia or Georgia will be denied entry into the United States.

(b) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel that is required to be listed, but not listed on the ICCAT record of authorized vessels will be denied entry into the United States.

(c) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel listed on the ICCAT record as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(d) All shipments of tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(e) For the purposes of this section, it is a rebuttable presumption that any shipment containing swordfish, bluefin tuna, bigeye tuna, or their products offered for entry into the United States

has been harvested by a vessel or vessels of the exporting nation.

[69 FR 70400, Dec. 6, 2004, as amended at 70 FR 28218, May 17, 2005]

Subpart E—International Port Inspection

§ 635.50 Basis and purpose.

The regulations in this subpart implement the ICCAT port inspection scheme. The text of the ICCAT port inspection scheme may be obtained from NMFS.

§ 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to serve as an authorized inspector for ICCAT, and who possesses identification issued by the authorized officer's national government.

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party.

(b) A vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, that is registered by any of the ICCAT contracting parties, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping regulated species or when making a port call in the United States.

(c) The master of a vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, must cooperate with an authorized officer during the conduct of an inspection in national and foreign ports. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

§ 635.53 Reports.

(a) Apparent violations shall be reported by the authorized officer on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The authorized officer must sign the form in the presence of the master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel and to the ICCAT Secretariat within 10 days. Flag states will consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

Subpart F—Enforcement

§ 635.69 Vessel monitoring systems.

(a) *Applicability*. To facilitate enforcement of time/area and fishery closures, an owner or operator of a commercial vessel, permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or gillnet gear, is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit under the following circumstances:

(1) Whenever the vessel is away from port with pelagic longline gear on board;

(2) As of January 1, 2005, whenever a vessel issued a directed shark LAP, is away from port with bottom longline gear on board, is located between 33°00′ N. lat. and 36°30′ N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or

(3) Whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board during the right whale calving season specified in the regulations implementing the Atlantic

Large Whale Take Reduction Plan Regulations in § 229.32 of this title.

(4) A vessel is considered to have pelagic longline gear on board, for the purposes of this section, when gear as specified at § 635.21(c) is on board. A vessel is considered to have bottom longline gear on board, for the purposes of this section, when gear as specified at § 635.21(d) is on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in § 600.10, is on board a vessel that has been issued a shark LAP.

(b) *Hardware specifications.* The VMS hardware must be approved by NMFS and must be able to perform all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS units. As necessary, NMFS will make additions and/or amendments to the VMS hardware type approval list to account for changes in specifications or new products offered by manufacturers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(c) *Communications specifications.* The communications service provider must be approved by NMFS and must be able to provide all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS communications service providers. As necessary, NMFS will make additions and/or amendments to the VMS communications service providers type approval list to account for changes in specifications or new services offered by communications providers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(d) *Installation and service activation.* When installing and activating the NMFS-approved VMS unit, a vessel owner or operator must follow procedures indicated on an installation and activation checklist obtained from NMFS. Re-installation shall require the same checklist. Upon completion of installation, the vessel owner must sign a statement certifying compliance with the installation procedures of the checklist and submit such certification to NMFS as indicated on the checklist. Vessels fishing prior to submission of the certification will be in violation of the VMS requirement.

(e) *Operation.* Owners or operators of vessels permitted, or required to be permitted, to fish for HMS, that have pelagic or bottom longline gear or gillnet gear on board, and that are required to have a VMS unit installed, as specified in paragraph (a), must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and continuing until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(f) *Interruption.* When the vessel operator is aware that transmission of automatic position reports has been interrupted, or when notified by NMFS that automatic position reports are not being received, the vessel operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable.

(g) *Repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider shall be in accordance with the checklist provided by NMFS and require the same certification.

(h) *Access.* As a condition to obtaining a LAP for Atlantic swordfish, sharks, or tunas, all vessel owners or operators using pelagic or bottom longline or gillnet gear, subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access

to the vessel's position data obtained from the VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 65 FR 47238, Aug. 1, 2000; 68 FR 45169, Aug. 1, 2003; 68 FR 74788, Dec. 24, 2003; 69 FR 51012, Aug. 17, 2004; 72 FR 57194, Oct. 5, 2007; 73 FR 40712, July 15, 2008]

§ 635.70 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna.* Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

§ 635.71 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.32.

(2) Fish for, catch, possess, retain, or land Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, scientific research permit, display permit, chartering permit, or shark research permit on board the vessel, as specified in §§ 635.4 and 635.32.

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS without the appropriate valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(5) Fail to possess and make available for inspection a vessel permit on board the permitted vessel or upon transfer of HMS to a dealer or a dealer permit at the dealer's place of business, or to alter any such permit as specified in § 635.4(a).

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an EFP, scientific research permit, display permit, chartering permit, or shark research permit issued under § 635.32.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) and (f) or § 635.32.

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(e) and (f).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(10) Falsify or fail to display and maintain vessel and gear identification, as specified in § 635.6.

(11) Fail to comply with the requirements for at-sea observer coverage, as specified in § 635.7 and § 600.746.

(12) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(13) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

(14) Fail to install, activate, repair, or replace a vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or gillnet gear on board the vessel as specified in § 635.69.

(15) Tamper with, or fail to operate and maintain a vessel monitoring system as specified in § 635.69.

(16) Fail to contact NMFS or follow NMFS instructions when automatic position reporting has been interrupted as specified in § 635.69.

(17) Fish for Atlantic tunas or swordfish with a gillnet or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.21 (b), (e)(1), and (e)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a protected species, as specified in § 635.21 (c)(3) or (d)(2).

(19) Utilize secondary gears as specified in § 635.21(b) to capture, or attempt to capture, any undersized or free swimming Atlantic HMS, or fail to release a captured Atlantic HMS in the manner specified in § 635.21(a).

(20) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in § 635.33.

(21) Fail to maintain an Atlantic HMS in the form specified in § 635.30.

(22) Fish for, catch, retain, or possess an Atlantic HMS that is less than its minimum size limit specified in § 635.20.

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, or speargun gear as specified in § 635.21(c), (d), (e)(3), (e)(4), or (f).

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any import requirements or import restrictions specified at § 635.40 or 635.41.

(25) Dispose of fish or parts thereof or other matter in any manner after any communication or signal from an authorized officer, or after the approach of an authorized officer.

(26) Violate the terms and conditions or any provision of a permit issued under §§ 635.4 or 635.32.

(27) Operate a charterboat or headboat without a valid U.S. Coast Guard merchant marine or uninspected passenger vessel license on board the vessel when fishing for or possessing Atlantic HMS as specified at § 635.4(b).

(28) Violate any provision of this part, the Magnuson-Stevens Act, ATCA, or any regulations or permits issued under the Magnuson-Stevens Act or ATCA.

(29) Land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control:

(i) Any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

(ii) Any fish of a species regulated pursuant to a recommendation of ICCAT that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

(30) Deploy or fish with any fishing gear from a vessel or anchor a fishing vessel, permitted or required to be permitted under this part, in any closed area as specified at § 635.21.

(31) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board in any closed area during the time periods specified at § 635.21(c)(2).

(32) In the Gulf of Mexico, deploy or fish a pelagic longline with live bait affixed to the hooks or to possess live bait, or set up a well or tank to maintain live bait, aboard a vessel with pelagic longline gear on board as specified at § 635.21(c)(4).

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(3)(i) for bottom longline gear. This equipment must be utilized in accordance with § 635.21(c)(5)(ii) and (d)(3)(ii) for pelagic and bottom longline gear, respectively.

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21 (c)(5) or (d)(3).

(35) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, NMFS personnel or anyone collecting information for NMFS,

under an agreement or contract, relating to the scientific monitoring or management of Atlantic HMS.

(36) Fish with bottom or pelagic longline and shark gillnet gear for HMS without adhering to the gear operation and deployment restrictions required in 50 CFR 635.21.

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.5.

(38) Fish for, or possess on board a fishing vessel, species regulated under this part in unauthorized fishing areas as specified in § 635.25.

(39) Deploy or fish with any fishing gear, from a vessel with a bottom longline on board, in any closed area during the time periods specified at § 635.21(d)(1).

(40) Deploy or fish with any fishing gear, from a vessel with bottom longline gear on board, without carrying a dipnet, line clipper, and dehooking device as specified at § 635.21(d)(3).

(41) Fail to immediately notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(5).

(42) Count chartering arrangement catches against quotas other than those defined as the Contracting Party of which the chartering foreign entity is a member as specified in § 635.5(a)(5).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(5).

(44) Offload charter arrangement catch in ports other than ports of the chartering Contracting Party of which the foreign entity is a member or offload catch without the direct supervision of the chartering foreign entity as specified in § 635.5(a)(5).

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel that is not listed in the ICCAT record of authorized vessels as specified in § 635.41(b).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.41(c).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.41(d).

(48) Purchase any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(49) Sell any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(50) Fish without being certified for completion of a NMFS protected species safe handling, release, and identification workshop, as required in § 635.8.

(51) Fish without having a valid protected species workshop certificates issued to the vessel owner and operator on board the vessel as required in § 635.8.

(52) Falsify a NMFS protected species workshop certificate or a NMFS Atlantic shark identification workshop certificate as specified at § 635.8.

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'', as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(b) *Atlantic tunas.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Engage in fishing with a vessel that has been issued an Atlantic Tunas or Atlantic HMS permit under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel and/or brought on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

(2) [Reserved]

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit, or an Atlantic tunas Purse Seine category permit as authorized under § 635.23 (b), (c), and (e)(2).

(4) Fail to inspect a vessel's permit, fail to affix a dealer tag to a large medium or giant BFT, or fail to use such tag as specified in § 635.5(b)(2).

(5) Fail to report a large medium or giant BFT that is not sold, as specified in § 635.5(a)(3).

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a BFT, as specified in § 635.5(c)(1) or (c)(3).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have such gear on board when in possession of a BFT, as specified in § 635.21(e)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(e)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under § 635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets if there is no remaining BFT allocation made under § 635.27 (a)(4).

(11) Exceed the recreational catch limit for yellowfin tuna, as specified in § 635.22(d).

(12) Exceed a catch limit for BFT specified for the appropriate permit category, as specified in § 635.23.

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in § 635.23(a)(3).

(14) As a person aboard a vessel issued an HMS Angling or Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a person aboard a vessel issued an HMS Angling or HMS Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT retained when fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(16) Retain a BFT caught under the catch and release program specified in § 635.26.

(17) As a vessel with a Purse Seine category Atlantic tunas permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to the commencement date of the directed BFT purse seine fishery, as specified in § 635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under § 635.23(e)(2).

(19) Fish for, retain, possess, or land a BFT when the fishery is closed, as specified in § 635.28(a), except as may be authorized for catch and release under § 635.26.

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in § 635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirement for possession at sea and landing of BFT under § 635.30(a).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under § 635.23(f)(1), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

(24) Fail to comply with the restrictions on sale and purchase of an Atlantic tuna, as specified in §§ 635.5(b), 635.23, and 635.31(a).

(25) [Reserved]

(26) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic tunas.

(27) Possess a large medium or giant BFT, after it has been landed, that does not have a dealer tag affixed to it as specified in § 635.5(b)(2)(ii), unless the BFT is not to be sold and has been reported per the requirements specified in §§ 635.5(a)(3) or 635.5(c).

(28) Participate in any HMS recreational fishing activity aboard a vessel issued an Atlantic Tunas General category permit unless, as specified at § 635.4(c)(2) and (3), the vessel has registered and paid an entry fee to, and is fishing under the rules of, a recreational HMS fishing tournament registered as required under § 635.5(d)

(29) Import a bigeye tuna or bigeye tuna product into the United States from Bolivia or Georgia as specified in § 635.41.

(30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(f).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(f).

(32) Sell, purchase, barter for, or trade for an Atlantic BAYS tuna harvested with speargun fishing gear, as specified at § 635.31(a)(1).

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(f).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(f).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat permit, as specified at § 635.21(f).

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) As specified in § 635.21(e)(2), retain a billfish harvested by gear other than rod and reel, or retain a billfish on board a vessel unless that vessel has been issued an Atlantic HMS Angling or Charter/Headboat permit or has been issued an Atlantic Tunas General category permit and is participating in a tournament in compliance with § 635.4(c).

(2) Transfer a billfish at sea, as specified in § 635.29(a).

(3) Fail to maintain a billfish in the form specified in § 635.30(b).

(4) Sell or purchase a billfish, as specified in § 635.31(b).

(5) Retain on board a vessel a longbill spearfish, or a blue marlin, white marlin or sailfish that is less than the minimum size specified in § 635.20(d).

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a billfish, as specified in § 635.5(c)(2) or (c)(3).

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(e)(2).

(8) Take, retain, or possess an Atlantic blue or white marlin when the fishery for these species has been restricted to catch and release fishing only, as specified in § 635.27(d).

(d) *Shark*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Exceed a recreational retention limit for shark, as specified in § 635.22(c).

(2) Exceed a commercial retention limit for shark, as specified in § 635.24(a).

(3) Retain, possess, or land a shark of a species group when the fishery for that species group and/or region is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species group when the fishery for that species group and/or region is closed, as specified in § 635.28(b).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c). Fail to maintain naturally attached shark fins through offloading as specified in § 635.30(c).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in

§ 635.30(c) and § 600.1204(e) and (l) of this chapter.

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c).

(9) Fail to comply with the restrictions on sale and purchase of a shark, as specified in § 635.31(c).

(10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a), and 635.27(b), or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d).

(11) Receive, purchase, trade, or barter for Atlantic sharks without a valid Atlantic shark identification workshop certificate or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21(e)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(e)(3).

(14) Receive, purchase, trade, or barter for Atlantic shark without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, a valid Atlantic shark identification workshop certificate issued by NMFS in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

(15) Sell or transfer or attempt to sell or transfer a shark or sharks or part of a shark or sharks in excess of the retention limits specified in § 635.24(a).

(16) Purchase, receive, or transfer or attempt to purchase, receive, or transfer a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

(17) Replace sharks that are onboard the vessel for retention with sharks of higher quality or size that are caught later in a particular trip as specified in § 635.24(a).

(e) *Swordfish.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock without a dealer permit as specified in § 635.4(g).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(3) When the directed fishery for swordfish is closed, exceed the limits specified in § 635.28(c)(1)(i) and (c)(1)(ii).

(4) When the incidental catch fishery for swordfish is closed, possess, land, sell, or purchase a swordfish, as specified in § 635.28(c)(2).

(5) Transfer at sea a swordfish, as specified in § 635.29(a).

(6) Fail to maintain a swordfish in the form specified in § 635.30(d).

(7) Fail to comply with the restrictions on sale and purchase of a swordfish, as specified in § 635.31(d).

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear.

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'' as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed or swordfish handgear limited access permit category and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

(12) Fail to mark each buoy gear as required at § 635.6(c)(1).

(13) Exceed the incidental catch retention limits specified at § 635.24(b).

(14) Exceed the recreational catch limit for North Atlantic swordfish, as specified in § 635.22(f).

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (c)(3).

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear § 635.21(e).

(17) Fail to construct, deploy, or retrieve buoy gear as specified at § 635.21(e)(4)(iii).

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.71, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 73 FR 54735, Sept. 23, 2008, § 635.71 was amended by revising paragraph (a)(23) and adding paragraphs (b)(36) through (40), effective October 23, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, or greenstick gear as specified in § 635.21(c), (d), (e)(1), (e)(3), (e)(4), (f), or (g).

* * * * *

(b) * * *

(36) Possess Jhooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when greenstick gear is onboard, as specified at § 635.21(c)(2)(v)(A) and (c)(5)(iii)(C)(*3*).

(37) Use or deploy Jhooks with pelagic longline gear from a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

(38) Possess more than 20 Jhooks onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, when possessing onboard both pelagic longline gear, as described at § 635.21(c), and greenstick gear as defined at § 635.2.

(39) Use or deploy more than 10 hooks at one time on any individual greenstick gear.

(40) Possess, use, or deploy Jhooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any other part of the hook, when fishing with or possessing greenstick gear onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

* * * * *

APPENDIX A TO PART 635—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 635–OCEANIC SHARKS

A. Large coastal sharks:

1. Ridgeback sharks:

Sandbar, *Carcharhinus plumbeus*
Silky, *Carcharhinus falciformis*
Tiger, *Galeocerdo cuvieri*

2. Non-ridgeback sharks:

Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*

B. Small coastal sharks:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

C. Pelagic sharks:

Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*.

D. Prohibited sharks:

Atlantic angel, *Squatina dumerili*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus vitulus*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezi*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*

Night, *Carcharhinus signatus*
Sand tiger, *Odontaspis taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

TABLE 2 OF APPENDIX A TO PART 635–PELAGIC SPECIES

Albacore tuna, *Thunnus alalunga*
Bigeye tuna, *Thunnus obesus*
Blue shark, *Prionace glauca*
Bluefin tuna, *Thunnus thynnus*
Dolphin fish, *Coryphaena hippurus*
Oceanic whitetip shark, *Carcharhinus longimanus*
Porbeagle shark, *Lamna nasus*
Shortfin mako shark, *Isurus oxyrinchus*
Skipjack tuna, *Katsuwonus pelamis*
Swordfish, *Xiphias gladius*
Thresher shark, *Alopias vulpinus*
Wahoo, *Acanthocybium solandri*
Yellowfin tuna, *Thunnus albacares*

TABLE 3 OF APPENDIX A TO PART 635–DEMERSAL SPECIES

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Black grouper, *Mycteroperca bonaci*
Blackfin snapper, *Lutjanus buccanella*
Blacknose shark, *Carcharhinus acronotus*
Blacktip shark, *Carcharhinus limbatus*
Blueline tilefish, *Caulolatilus microps*
Bonnethead shark, *Sphyrna tiburo*
Bull shark, *Carcharhinus leucas*
Cubera snapper, *Lutjanus cyanopterus*
Dog snapper, *Lutjanus jocu*
Finetooth shark, *Carcharhinus isodon*
Gag grouper, *Mycteroperca microlepis*
Lane snapper, *Lutjanus synagris*
Lemon shark, *Negaprion brevirostris*
Mangrove snapper, *Lutjanus griseus*
Marbled grouper, *Dermatolepis inermis*
Misty grouper, *Epinephelus mystacinus*
Mutton snapper, *Lutjanus analis*
Nurse shark, *Ginglymostoma cirratum*
Queen snapper, *Etelis oculatus*
Red grouper, *Epinephelus morio*
Red hind, *Epinephelus guttatus*
Red snapper, *Lutjanus campechanus*
Rock hind, *Epinephelus adscensionis*
Sand tilefish, *Malacanthus plumieri*
Sandbar shark, *Carcharhinus plumbeus*
Schoolmaster snapper, *Lutjanus apodus*
Silk snapper, *Lutjanus vivanus*
Snowy grouper, *Epinephelus niveatus*
Speckled hind, *Epinephelus drummondhayi*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*
Tilefish, *Lopholatilus chamaeleonticeps*
Vermilion snapper, *Rhomboplites aurorubens*
Warsaw grouper, *Epinephelus nigritus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Yellowfin grouper, *Mycteroperca venenosa*
Yellowtail snapper, *Ocyurus chrysurus*

[64 FR 29135, May 28, 1999 as amended at 71 FR 58174, Oct. 2, 2006]

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.
640.1 Purpose and scope.
640.2 Definitions.
640.3 Relation to other laws.
640.4 Permits and fees.
640.5 Recordkeeping and reporting. [Reserved]
640.6 Vessel and gear identification.
640.7 Prohibitions.
640.8 Facilitation of enforcement.
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Subpart B—Management Measures

640.20 Seasons.
640.21 Harvest limitations.
640.22 Gear and diving restrictions.
640.23 Bag/possession limits.
640.24 Authorized activities.
640.25 Adjustment of management measures.
640.26 Tortugas marine reserves.
FIGURE 1 TO PART 640

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

Subpart A—General Provisions

§ 640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from

the requirements of this part 640, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

[57 FR 56518, Nov. 30, 1992]

§ 640.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bully net means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

Carapace length means the measurement of the carapace (head, body, or front section) of a spiny lobster from the anteriormost edge (front) of the groove between the horns directly above the eyes, along the middorsal line (middle of the back), to the rear edge of the top part of the carapace, excluding any translucent membrane.

Commercial fishing means any fishing or fishing activities which result in the harvest of any marine or freshwater organisms, one or more of which (or parts thereof) is sold, traded, or bartered.

Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

Off Florida means the area from the Florida coast to the outer limit of the EEZ between the Georgia/Florida boundary (30°42′45.6″N. latitude) and the Alabama/Florida boundary (87°31′06″W. longitude).

Off the Gulf states, other than Florida means the area from the coast to the outer limit of the EEZ between the Texas/Mexico border to the Alabama/Florida boundary (87°31′06″ W. long.).

Off Monroe County, Florida means the area from the Florida coast to the outer limit of the EEZ between a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4′N. latitude) and a line extending directly west from the Monroe/Collier County, Florida boundary (25°48.0′N. latitude).

Off the southern Atlantic states, other than Florida means the area from the coast to the outer limit of the EEZ between the Virginia/North Carolina boundary (36°34′55″ N. lat.) to the Georgia/Florida boundary (30°42′45.6″ N. lat.).

Recreational fishing means fishing or fishing activities which result in the harvest of fish, none of which (or parts thereof) is sold, traded, or bartered.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

Slipper (Spanish) lobster means the species *Scyllarides nodifer*.

Spiny lobster means the species *Panulirus argus*.

Tail length means the lengthwise measurement of the entire tail (segmented portion), not including any protruding muscle tissue, of a spiny lobster along the top middorsal line (middle of the back) to the rearmost extremity. The measurement is made with the tail in a flat, straight position with the tip of the tail closed.

Trip means a fishing trip, regardless of number of days' duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 17196, May 16, 1988; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988; 55 FR 26448, June 28, 1990; 57 FR 56518, Nov. 30, 1992; 58 FR 38979, July 21, 1993; 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995]

§ 640.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) The regulations in this part apply within the boundaries of any national park, monument, or marine sanctuary

in the Gulf of Mexico and South Atlantic EEZ.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 24655, June 29, 1988]

§ 640.4 Permits and fees.

(a) *Applicability*—(1) *Licenses, certificates, and permits*—(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a ''commercial harvester,'' as defined in Rule 46–24.002(2), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) *EEZ other than off Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested in the EEZ other than off Florida or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, a Federal vessel permit must be issued to the harvesting vessel and must be on board. However, see paragraph (a)(1)(i) of this section for the licenses and certificates required for a person to possess or land spiny lobster harvested in the EEZ other than off Florida and subsequently possessed in the EEZ off Florida or landed from a fishing vessel in Florida.

(2) *Tail-separation permits.* For a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ, a tail-separation permit must be issued to the vessel and must be on board.

(3) *Corporation/partnership-owned vessels.* For a vessel owned by a corporation or partnership to be eligible for a Federal vessel permit specified in paragraph (a)(1)(ii) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) *Operator-qualified permits.* A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Applications for permits.* (1) An application for a Federal vessel and/or tail-separation permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section

and the operator does meet that qualification, the name, mailing address including zip code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(vi) A sworn statement by the applicant for a vessel permit certifying that at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, during the calendar year preceding the application.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) If a tail-separation permit is desired, a sworn statement by the applicant certifying that his or her fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display.* A permit issued pursuant to this section must be carried on board the vessel, and such vessel must be identified as required by § 640.6. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

[57 FR 56518, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995; 69 FR 18803, Apr. 9, 2004]

§ 640.5 Recordkeeping and reporting. [Reserved]

§ 640.6 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobsters by traps in the EEZ off Florida must comply with the vessel and gear identification requirements applicable to the harvesting of spiny lobsters by traps in Florida's waters in sections 370.14(2)(a) and (3) and 370.142(2)(b), Florida Statutes, in effect as of July 1, 1994, and in Rule 46–24.006(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 46–24.006(6), Florida Administrative Code, in effect as of June 1, 1994.

(3) The incorporation by reference in paragraphs (a)(1) and (a)(2) of this section of sections 370.14(2)(a) and (3) and 370.142(2)(b), Florida Statutes, and Rule 46–24.006(3), (4), (5), and (6), Florida Administrative Code, was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *EEZ other than off Florida.* (1) The owner or operator of a vessel that is used to harvest spiny lobsters in the EEZ other than off Florida, must meet the following vessel and gear identification requirements:

(i) The vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number must be permanently and conspicuously displayed horizontally on the uppermost structural portion of the vessel in numbers at least 10 inches (25.4 cm) high so as to be readily identifiable from the air and water;

(ii) If the vessel uses spiny lobster traps in the EEZ, other than off Florida—

(A) The vessel's color code, as assigned by Florida or, if a color code has not been assigned by Florida, as assigned by the Regional Director, must be permanently and conspicuously displayed above the number specified in paragraph (b)(1)(i) of this section so as to be readily identifiable from the air and water, such color code being in the form of a circle at least 20 inches (50.8 cm) in diameter on a background of colors contrasting to those contained in the assigned color code;

(B) A buoy or timed-release buoy of such strength and buoyancy to float must be attached to each spiny lobster trap or at each end of a string of traps;

(C) A buoy used to mark spiny lobster traps must bear the vessel's assigned color code and be of such color, hue, and brilliancy as to be easily distinguished, seen, and located;

(D) A buoy used to mark spiny lobster traps must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number in numbers at least 2 inches (5.08 cm) high; and

(E) A spiny lobster trap must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number permanently and legibly affixed.

(2) A spiny lobster trap in the EEZ, other than off Florida, will be presumed to be the property of the most recently documented owner. Upon the sale or transfer of a spiny lobster trap used in the EEZ, other than off Florida, within 5 days of acquiring ownership, the person acquiring ownership must notify the Florida Division of Law Enforcement of the Department of Environmental Protection, for a trap that bears a Florida crawfish license or trap number, or the Regional Director, for a trap that bears a Federal vessel permit number, as to the number of traps purchased, the vendor, and the crawfish license or trap number, or Federal vessel permit number, currently displayed on the traps, and must request issuance of a crawfish license or trap number, or Federal vessel permit, if the acquiring owner does not possess such license or trap number or permit.

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

[57 FR 56519, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995; 69 FR 18803, Apr. 9, 2004]

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ without a required license, certificate, or permit, as specified in § 640.4(a)(1).

(b) Falsify information specified in § 640.4(b)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 640.4(h).

(d) Falsify or fail to display and maintain vessel and gear identification, as required by § 640.6 (a) and (b).

(e) Possess a spiny lobster trap in the EEZ at a time not authorized, as specified in § 640.20(b)(3)(i) and (b)(3)(ii).

(f) Possess a spiny lobster in or from the EEZ at a time not authorized, as specified in § 640.20(b)(4).

(g) Fail to return immediately to the water a berried spiny lobster or slipper lobster; strip eggs from or otherwise molest a berried spiny lobster or slipper lobster; or possess a spiny lobster or slipper lobster, or part thereof, from which eggs, swimmerettes, or pleopods have been removed or stripped; as specified in § 640.21(a).

(h) Possess or fail to return immediately to the water unharmed a spiny lobster smaller than the minimum size limits specified in § 640.21 (b)(1) and (b)(3), except as provided in § 640.21(c).

(i) Harvest or attempt to harvest a spiny lobster by diving without having and using in the water a measuring device, or fail to release an undersized spiny lobster in the water, as specified in § 640.21(b)(2).

(j) Possess an undersized spiny lobster for use as an attractant in a trap in quantities or under conditions not authorized in § 640.21(c).

(k) Possess a separated spiny lobster tail, except as specified in § 640.21(d).

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance; as specified in § 640.20(b) and § 640.22 (a)(1) and (a)(3).

(m) Use or possess in the EEZ a spiny lobster trap that does not meet the requirements specified in § 640.22(b)(1).

(n) Pull or tend a spiny lobster trap other than during daylight hours, as specified in § 640.22(b)(2).

(o) Pull or tend another person's spiny lobster trap, except as authorized in § 640.22(b)(3).

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23 (a), (b)(1), or (b)(2) except as authorized in § 640.23(b)(3) and (b)(4).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(b)(4).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an

amount exceeding the cumulative bag and possession limit, as specified in § 640.23(d).

(s) Transfer or receive at sea spiny lobster in or from the EEZ caught under the bag and possession limits, as specified in § 640.23(e).

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(u) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a spiny lobster.

(v) Fish for any species or anchor a fishing vessel in a marine reserve as specified in § 640.26.

[57 FR 56520, Nov 30, 1992, as amended at 58 FR 38979, July 21, 1993; 58 FR 61845, Nov. 23, 1993; 59 FR 53119, Oct. 21, 1994; 60 FR 41831, Aug. 14, 1995; 67 FR 47469, July 19, 2002]

§ 640.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 640.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

SOURCE: 57 FR 56520, Nov. 30, 1992, unless otherwise noted.

§ 640.20 Seasons.

(a) *EEZ off the southern Atlantic states, other than Florida.* In the EEZ off the southern Atlantic states, other than Florida, there are no seasonal restrictions on the harvest of spiny lobster or on the possession of traps.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ off Florida and the EEZ off the Gulf states, other than Florida, begins on August 6 and ends on March 31.

(2) *Special recreational fishing seasons*—(i) *EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 640.22(a) for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(ii) *EEZ off the Gulf states, other than Florida.* There is a 2-day special recreational fishing season in the EEZ off the Gulf states, other than Florida, during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 640.22(a) for general prohibitions on gear and methods.)

(3) *Possession of traps.* (i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 46–24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) In the EEZ off the Gulf states, other than Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season, which is specified in paragraph

(b)(1) of this section beginning on August 1 and must be removed from the water after such season not later than April 5.

(iii) A spiny lobster trap, buoy, or rope in the EEZ off Florida or in the EEZ off the Gulf states, other than Florida, during periods not authorized in paragraphs (b)(3)(i) and (b)(3)(ii) of this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(4) *Possession of spiny lobsters*. In the EEZ off Florida and the Gulf states, a whole or a part of a spiny lobster subject to these regulations may only be possessed during the commercial and recreational fishing season and the special recreational fishing season specified in § 640.20, unless accompanied by proof of lawful harvest in the waters of a foreign nation. Consistent with the provisions of paragraphs (b)(3)(i) and (ii) of this section, a spiny lobster in a trap in this area will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed when a trap is removed from the water between March 31 and April 15.

(c) *Primacy of seasonal restrictions in the EEZ off Florida*. The seasonal restrictions applicable in the EEZ off Florida apply to all spiny lobsters and traps in the EEZ off Florida, without regard to harvest or use elsewhere, unless accompanied by proof of lawful harvest elsewhere.

[60 FR 41831, Aug. 14, 1995, as amended at 69 FR 18803, Apr. 9, 2004]

§ 640.21 Harvest limitations.

(a) *Berried lobsters*. A berried (egg-bearing) spiny lobster or slipper lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster or slipper lobster may not be retained in the trap. A berried spiny lobster or slipper lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster or slipper lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

(b) *Minimum size limits*. (1) Except as provided in paragraph (c) of this section—

(i) No person may possess a spiny lobster in or from the EEZ with a carapace length of 3.0 inches (7.62 cm) or less; and

(ii) A spiny lobster, harvested in the EEZ by means other than diving, with a carapace length of 3.0 inches (7.62 cm) or less must be returned immediately to the water unharmed.

(2) No person may harvest or attempt to harvest a spiny lobster by diving in the EEZ unless he or she possesses, while in the water, a measuring device capable of measuring the carapace length. A spiny lobster captured by a diver must be measured in the water using such measuring device and, if the spiny lobster has a carapace length of 3.0 inches (7.62 cm) or less, it must be released unharmed immediately without removal from the water.

(3) Aboard a vessel authorized under paragraph (d) of this section to possess a separated spiny lobster tail, no person may possess in or from the EEZ a separated spiny lobster tail with a tail length less than 5.5 inches (13.97 cm).

(c) *Undersized attractants*. A live spiny lobster under the minimum size limit specified in paragraph (b)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than fifty undersized spiny lobsters, or one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of ¾ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to one hour after official sunset each day.

(d) *Tail separation*. The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and

a Federal tail-separation permit specified in § 640.4(a)(2) has been issued to and is on board the vessel.

[57 FR 56520, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994]

§ 640.22 Gear and diving restrictions.

(a) *Prohibited gear and methods.* (1) A spiny lobster may not be taken in the EEZ with a spear, hook, or similar device, or gear containing such devices. In the EEZ, the possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence that prohibited gear was used to take such lobster. Hook, as used in this paragraph (a)(1), does not include a hook in a hook-and-line fishery for species other than spiny lobster; and possession of a spiny lobster that has been speared, pierced, or punctured by such hook is not considered evidence that prohibited gear was used to take the spiny lobster, provided no prohibited gear is on board the vessel.

(2) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 640.23(d) for the bycatch limits applicable to a vessel that uses or has on board a net or trawl.

(3) Poisons and explosives may not be used to take a spiny lobster or slipper lobster in the EEZ. For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster or slipper lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

(b) *Traps.* (1) In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(2) A spiny lobster trap in the EEZ may be pulled or tended during daylight hours only, that is, from 1 hour before official sunrise to 1 hour after official sunset.

(3) A spiny lobster trap in the EEZ may be pulled or tended only by the owner's vessel, or by a vessel for which permission to pull or work traps belonging to another person has been granted—

(i) For traps in the EEZ off Florida, by the Florida Division of Law Enforcement, Department of Environmental Protection, in accordance with the procedures in Rule 46-24.006(7), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) For traps in the EEZ, other than off Florida, by the Regional Director, as may be arranged upon written request.

[57 FR 56520, Nov. 30, 1992, as amended at 58 FR 38980, July 21, 1993; 60 FR 41831, Aug. 14, 1995; 69 FR 18803, Apr. 9, 2004]

§ 640.23 Bag/possession limits.

(a) *EEZ off the southern Atlantic states, other than Florida.* The daily bag or possession limit for spiny lobster in or from the EEZ off the southern Atlantic states, other than Florida, is two per person for commercial and recreational fishing, year-round.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, during the commercial and recreational fishing season specified in § 640.20(b)(1), the daily bag or possession limit of spiny lobster in

or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 640.20(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.* During the commercial and recreational fishing season specified in § 640.20(b)(1), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 640.4(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 640.20(b)(1), aboard a vessel with the required licenses, certificates, or permits specified in § 640.4(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term ''net or trawl'' does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 640.4(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(c) *Combination of bag/possession limits.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not combine the bag or possession limits of those paragraphs or combine such bag or possession limit with a bag or possession limit applicable to state waters.

(d) *Responsibility for bag/possession limits.* The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the cumulative bag or possession limit specified in paragraphs (a) and (b) of this section applicable to that vessel, based on the number of persons aboard.

(e) *Transfer at sea.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not transfer a spiny lobster at sea from a fishing vessel to any other vessel, and no person may receive at sea such spiny lobster.

[60 FR 41831, Aug. 14, 1995]

§ 640.24 Authorized activities.

The Assistant Administrator may authorize, for the acquisition of information and date, activities otherwise prohibited by the regulations in this part.

[57 FR 56520, Nov. 30, 1992, as amended at 60 FR 41832, Aug. 14, 1995]

§ 640.25 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RA may establish or modify the following items: definitions of essential fish habitat, Essential Fish Habitat-Habitat Areas of Particular Concern, Coral-Habitat Areas of Particular Concern, biomass levels, age-structured analyses, limits on the number of traps fished by each vessel, construction

characteristics of traps, specification of gear and vessel identification requirements, specification of allowable or prohibited gear in a directed fishery, specification of bycatch levels in non-directed fisheries, changes to soak or removal periods and requirements for traps, recreational bag and possession limits, changes in fishing seasons, limitations on use, possession, and handling of undersized lobsters, and changes in minimum size.

[65 FR 37296, June 14, 2000]

§ 640.26 Tortugas marine reserves.

The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(a) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00′ N. lat., 83°06′00′ W. long. to point B at 24°46′00′ N. lat., 83°06′00′ W. long. to point C at 24°46′00′ N. lat., 83°00′00′ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40′00′ N. lat., 83°06′00′ W. long.

(b) *Tortugas South.* The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00′	83°09′00′
B	24°33′00′	83°05′00′
C	24°18′00′	83°05′00′
D	24°18′00′	83°09′00′
A	24°33′00′	83°09′00′

[67 FR 47469, July 19, 2002]

FIGURE 1 TO PART 640

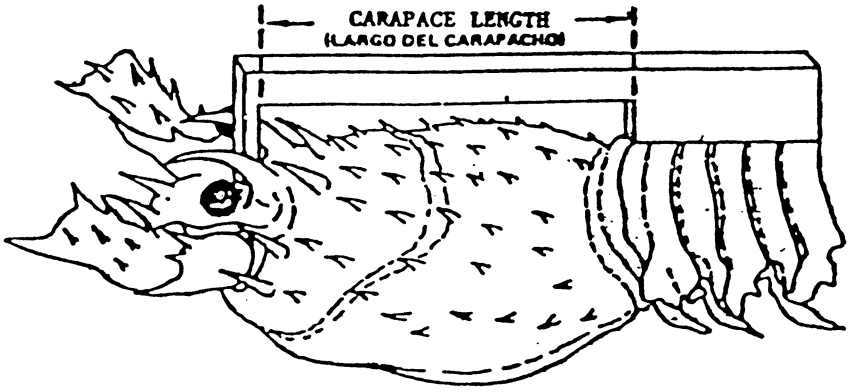

Figure 1

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

PART 644 [RESERVED]

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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FIGURE 1 TO PART 648

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

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

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

Subpart A—General Provisions

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the tilefish fishery (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

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

[61 FR 34968, July 3, 1996, as amended at 61 FR 43424, Aug. 23, 1996; 62 FR 13299, Mar. 20, 1997; 65 FR 1568, Jan. 11, 2000; 65 FR 77464, Dec. 11, 2000; 66 FR 49192, Sept. 26, 2001; 67 FR 63229, Oct. 10, 2002; 68 FR 49699, Aug. 19, 2003]

§ 648.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this

chapter, the terms used in this part have the following meanings:

Alewife means *Alosa pseudoharengus*.

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

American shad means *Alosa sapidissima*.

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

Atlantic croaker means *Micropogonias undulatus*.

Atlantic deep-sea red crab (red crab) means *Chaceon quinquedens*.

Atlantic hagfish means *Myxine glutinosa*.

Atlantic herring means *Clupea harengus*.

Atlantic herring carrier means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

Atlantic herring dealer means:

(1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait; or

(2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port.

Atlantic herring processor means a person who receives unprocessed Atlantic herring from a fishing vessel issued a Federal Atlantic herring permit or from an Atlantic herring dealer for the purposes of processing; or the owner or operator of a fishing vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring from a fishing vessel with a Federal Atlantic herring permit for resale as bait.

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

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

Atlantic salmon means *Salmo salar*.

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

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

Black sea bass means *Centropristis striata*.

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

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

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

Bluefish means *Pomotomus saltatrix*.

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

Bonito means *Sarda sarda*.

Border transfer (BT) means the amount of herring specified pursuant to § 648.200 that may be transferred to a Canadian transport vessel that is permitted under the provisions of Pub. L. 104–297, section 105(e).

Bottom-tending mobile gear, with respect to the NE multispecies fishery, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

Brush-sweep trawl gear means trawl gear consisting of alternating roller discs and bristle brushes that are strung along cables, chains, or footropes, and aligned together to form the sweep of the trawl net, designed to allow the trawl sweep to maintain contact with the ocean floor, or any modification to trawl gear that is substantially similar in design or effect.

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft^3 (53.24 L) of surfclams or ocean quahogs in shell, or 1.24 ft^3 (35.24 L) of in-shell Atlantic sea scallops.

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

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

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

Circle hook, with respect to the NE multispecies fishery, means a fishing hook with the point turned perpendicularly back to the shank, or an offset circle hook where the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

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

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

Commission means the Atlantic States Marine Fisheries Commission.

Conger eel means *Conger oceanicus*.

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies, monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

Councils with respect to the monkfish fishery and spiny dogfish fishery means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

Cunner means *Tautogolabrus adspersus*.

DAS flip, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and beginning fishing under a Category A DAS.

DAS Lease, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

DAS Lessee, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use of DAS to another NE multispecies limited access vessel.

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries (except as described in § 648.82(k)(1)(iv)), Atlantic sea scallop fishery, and Atlantic deep-sea red crab fishery, means the 24-hour period of

time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses or lands, regulated species, monkfish, scallops, or red crabs. With respect to the red crab fishery, any portion of a calendar day in which a vessel is declared into the red crab DAS fishery, shall count as a full DAS.

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

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

De-hooker, with respect to the NE multispecies hook gear fishery, means the fairlead rollers when used in a manner that extracts fish hooks from caught fish, also known as ''crucifiers.''

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

Dredge bottom, with respect to scallops, means the rings and links found between the bail of the dredge and the club stick, which, when fishing, would be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as ''diamonds.''

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

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

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

Fishing circle, with respect to the NE multispecies limited access fishery, means the calculated circumference of a bottom trawl based on the number of meshes and stretched mesh length at the narrow, aft end of the square of the net.

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

Fishing year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year.

(2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(3) For the tilefish fishery, from November 1 through October 31 of the following year.

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

Fixed gear, for the purposes of the Atlantic herring fishery, means weirs or stop seines.

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

FMP means fishery management plan.

Fourspot flounder means *Paralichthys oblongus*.

Full-processing (fully process or fully processed), with respect to the Atlantic

deep-sea red crab fishery, means any activity that removes meat from any part of a red crab.

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

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

Hagfish means *Myxine glutinosa*.

Hail Weight means a good-faith estimate in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded for each trip.

Handgear, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

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

Harbor porpoise means *Phocoena phocoena*.

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

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

Hickory shad means *Alosa mediocris*.

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

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

Incidental Total Allowable Catch (TAC), with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

Individual Transferable Quota (ITQ) Program means, for the Atlantic surfclam and ocean quahog fishery, the annual individual allocation of quota specified at § 648.70.

Inshore exempted species means the following species:

Bay scallop—*Aequipecten irradians*.
Blood arc clam—*Anadara ovalis*.
Blood worm—*Glycera dibranchiata*.
Blue crab—*Callinectes similis* and *Callinectes sapidus*.
Blue mussel—*Mytilus edulis*.
Green crab—*Carcinus maenas*.
Hermit crab—*Clibanarius vittatus*, *Pagurus pollicaris* and *Pagurus longicarpus*.
Japanese shore crab—*Hemigrapsus sanguineus*.
Oyster—*Crassostrea virginica* and *Ostrea edulis*.
Quahog—*Mercenaria mercenaria*.
Razor clam—*Ensis directus*.
Sand worm—*Neresis virens*.
Soft clam—*Mya arenaria*.
Spider crab*Libinia emarginata*.

IVR System means the Interactive Voice Response reporting system established by the Regional Administrator for the purpose of monitoring harvest levels for certain species.

Jigging, with respect to the NE multispecies fishery, means fishing for regulated species with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

John Dory means *Zenopsis conchifera*.

JVPt, with respect to the Atlantic herring fishery, means the specification of the total amount of herring available for joint venture processing by foreign vessels in the EEZ and state waters.

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

Lessee means a vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k).

Lessor means a vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program specified at § 648.82(k).

Limited access general category (LAGC) scallop vessel means a vessel that has been issued an individual fishing quota (IFQ), Northern Gulf of Maine (NGOM),

or incidental catch LAGC scallop permit pursuant to § 648.4(a)(2)(ii). An LAGC scallop vessel may also be issued a limited access scallop permit.

Limited access herring vessel means a vessel that has been issued a valid permit for any type of limited access herring vessel permit described in § 648.4.

Limited access scallop vessel means a vessel that has been issued a limited access full-time, part-time, or occasional scallop permit pursuant to § 648.4(a)(2)(i). A limited access scallop vessel may also be issued an LAGC scallop permit.

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

Link, with respect to the sea scallop fishery, means the material, usually made of a ⅜-inch (10-mm) or 7⁄16-inch (11-mm) diameter metal rod, that joins two adjacent rings within the ring bag of a dredge.

Little tunny means *Euthynnus alleteratus*.

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

Longhorn sculpin means *Myoxocephalus octodecimspinosus*.

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

Mahogany Quahog see *Ocean Quahog*

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

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

Menhaden means Atlantic menhaden, *Brevoortia tyrannus*.

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include discs, bobbins, or rollers on its footrope, or chafing gear as part of the net.

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

Monkfish, also known as *anglerfish* or *goosefish*, means *Lophius americanus*.

Monkfish gillnets means gillnet gear with mesh size no smaller than 10–inches (25.4 cm) diamond mesh that is designed and used to fish for and catch monkfish while fishing under a monkfish DAS.

Monkfish Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC and MAFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Regional Office, NEFSC, the USCG, two fishing industry representatives selected by their respective Council chairman (one from each management area with at least one of the two representing either the Atlantic sea scallop or northeast multispecies fishery), and staff from affected coastal states, appointed by the Atlantic States Marine Fisheries Commission. The Chair is elected by the Committee from within its ranks, subject to the approval of the Chairs of the NEFMC and MAFMC.

Mullet means any species in the family Mugilidae.

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

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

NAFO means Northwest Atlantic Fisheries Organization.

NAFO Convention Area means the waters of the Northwest Atlantic Ocean north of 35°00′ N. lat. and west of a line extending due north from 35°00′ N. lat.

and 42°00′ W. long. to 59°00′ N. lat., thence due west to 44°00′ W. long., and thence due north to the coast of Greenland and the waters of the Gulf of St. Lawrence, Davis Strait and Baffin Bay south of 78°10′ N. lat.

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

NEFSC means the Northeast Fisheries Science Center, NMFS.

NE Skate Complex (skates) means *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea*(little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

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

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

Non-exempt species means species of fish not included under the GOM, GB and SNE Regulated Mesh Area exempted fisheries, as specified in § 648.80(a)(5); (a)(6); (a)(9) through (14); (b)(3)(i) and (ii); (b)(5) through (8); and (d), (e), (h), and (i).

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

American plaice—*Hippoglossoides platessoides*.
Atlantic cod—*Gadus morhua*.
Atlantic halibut—*Hippoglossus hippoglossus*.
Haddock—*Melanogrammus aeglefinus*.
Ocean Pout—*Macrozoarces americanus*.
Offshore Hake—*Merluccius albidus*.
Pollock—*Pollachius virens*.
Redfish—*Sebastes fasciatus*.
Red hake—*Urophycis chuss*.
Silver hake (whiting)—*Merluccius bilinearis*.
White hake—*Urophycis tenuis*.
Windowpane flounder—*Scophthalmus aquosus*.
Winter flounder—*Pleuronectes americanus*.
Witch flounder—*Glyptocephalus cynoglossus*.
Yellowtail flounder—*Pleuronectes ferruginea*.

Northern shrimp means *Pandalus borealis*.

Ocean quahog means the species *Arctica islandica*.

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

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Sea Scallop Access Areas specified in §§ 648.59 and 648.60, Rotational Closed Areas specified in § 648.58, or EFH Closed Areas specified in § 648.61.

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

Out of the monkfish fishery means the period of time during which a vessel is not fishing for monkfish under the monkfish DAS program.

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

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

Parlor trap/pot means any structure or other device, other than a net, with more than one compartment inside designed to impede escape of lobsters or crabs from the device or structure, which is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching lobsters and/or red crabs.

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

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

Permit year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year;

(2) For all other fisheries in this part, from May 1 through April 30 of the following year.

Personal use, with respect to the surf clam or ocean quahog fishery, means harvest of surf clams or ocean quahogs

for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bu (106.48 L) per person per fishing trip.

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

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

Prior to leaving port, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C, D, F, G, or H permit provisions that are also fishing under a NE multispecies DAS, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

Private recreational fishing vessel, with respect to the NE multispecies fishery, means a vessel engaged in recreational fishing that has not been issued a Federal NE multispecies permit, does not sell fish, and does not take passengers for hire.

Processing, or to process, with respect to the Atlantic herring fishery, means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meat or oil.

Processor, with respect to the Atlantic surf clam and ocean quahog fisheries, means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

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

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

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

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

Red Crab Management Unit means an area of the Atlantic Ocean from 35° 15.3′ N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all Atlantic deep-sea red crab fished for, possessed, caught, or retained in or from such area.

Red crab trap/pot means any structure or other device, other than a net or parlor trap/pot, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching red crabs.

Regional Administrator means the Administrator, Northeast Region, NMFS, or a designee.

Regulated fishery means any fishery of the United States which is regulated under the Magnuson-Stevens Act.

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake, also referred to as regulated NE multispecies.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

Re-rig or *re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for a species in the applicable fishery.

Rigged hooks means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

Rockhopper and roller gear means trawl gear configured with disks, rollers, or other similar shaped devices that are attached to the bottom belly of the trawl, contact the sea bottom, and that are designed to raise the bottom panel of the trawl off the ocean bottom so as to enable the gear to be fished on hard bottom.

Rod and reel means a hand-held (including rod holder) fishing rod with a manually operated reel attached.

Rotational Closed Area, with respect to the Atlantic sea scallop fishery, means an area that is closed only to scallop fishing for a period defined in § 648.58.

Roundfish gillnets means gillnets that are constructed with floats on the float line and that have no tie-down twine between the float line and the lead line.

Runaround gillnet or encircling gillnet means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than 1/4 the length of the net or with an opening greater than 1/4 the length of the net, if the opening is obstructed in any fashion.

Scallop dredge vessel means any fishing vessel, other than a combination vessel, that uses or is equipped to use scallop dredge gear.

Scup means *Stenotomus chrysops*.

Scup Monitoring Committee means a committee made up of staff representative of the MAFMC, NEFMC, South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NEFSC, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Scup pot or trap means a pot or trap used in catching and retaining scup.

Sea Scallop Access Area, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as an area with area-specific management measures that are designed to control fishing effort and mortality on only the portion of the scallop resource within the specified Sea Scallop Access Area. Such measures are not applicable in Open Areas defined above.

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the NEFMC.

Sea raven means *Hemitripterus americanus*.

Searobin means any species of the family Triglidae.

Sector, with respect to the NE multispecies fishery, means a group of vessels that have voluntarily signed a contract and agree to certain fishing restrictions, and that have been allocated a portion of the TAC of a species, or an allocation of DAS.

Shucking or *to shuck* means opening or to open a scallop, surf clam, or ocean quahog and removing the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from a scallop, surf clam, or ocean quahog shell.

Sink gillnet or *bottom-tending gillnet* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near, the bottom in the lower third of the water column.

Skate means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

Skate Management Unit means an area of the Atlantic Ocean from 35°15.3′ N. lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer

boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught, or retained in or from such area.

Small-mesh multispecies means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

Smooth dogfish means *Mustelis canis*.

Sorting machine, with respect to the Atlantic sea scallop fishery, means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Spiny dogfish means *Squalus acanthias*.

Spiny Dogfish Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, and the states, as well as two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

Spot means *Leiostomus xanthurus*.

Square mesh, with respect to the NE multispecies fishery, means mesh in which the horizontal bars of the mesh run perpendicular to the long axis of the net so when the net is placed under a strain the mesh remains open to a square-like shape. Square mesh can be formed by hanging diamond mesh ''on the square,'' if the resulting mesh conforms with the above description of square mesh.

Squid means *Loligo pealei* or *Illex illecebrosus*.

Standard tote means a box typically constructed of plastic, designed to hold 100 lb (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 L, or a volume of not more than 4,320 cubic in (2.5 cubic ft or 70.79 cubic cm).

Static gear, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving to the gear, and includes gillnets, longlines, handgear, traps, and pots.

Stock of concern, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

Stocks targeted by the default measures, with respect to the NE multispecies fishery, are: American plaice, and SNE/MA yellowtail flounder for the 2006 fishing year; and American plaice, GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, white hake and SNE/MA winter flounder for the 2009 fishing year.

Stretched mesh, with respect to the NE multispecies Ruhle Trawl, means mesh that is pulled so that slack in the mesh is eliminated and the mesh opening is closed.

Sub-lease, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

Substantially similar harvesting capacity means the same or less GRT and vessel length.

Summer flounder means *Paralichthys dentatus*.

Summer Flounder Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, and SAFMC, the NMFS Northeast Regional Office, the NEFSC, the Southeast Science Center, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Surf clams means Atlantic surf clams of the species *Spisula solidissima*.

Sweep, with respect to the NE multispecies limited access fishery, means the part of a bottom trawl that, during normal use, is in contact with the sea floor along the outer edges of the lower webbing of the net.

Swordfish means *Xiphias gladius*.

Target total allowable catch (TAC) means the annual domestic harvest targets for regulated species.

Tautog (blackfish) means *Tautoga onitas*.

Tied up to the dock or *tying up at a dock* means tied up at a dock, on a mooring, or elsewhere in a harbor.

Tilefish means *Lopholatilus chamaeleonticeps*.

Tilefish FMP Monitoring Committee means a committee made up of staff representatives of the MAFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, up to three state representatives (the New England states having one representative and the Mid-Atlantic states having

a maximum of two representatives) and one non-voting industry member. The MAFMC Executive Director or his designee chairs the committee.

*Tilefish Management Unit*means an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36′ N. Lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the United States-Canada border in which the United States exercises exclusive jurisdiction over all golden tilefish (*Lopholatilus chamaeleonticeps*) fished for, possessed, caught or retained in or from such area.

Total Length (TL) means the straight-line distance from the tip of the snout to the end of the tail (caudal fin) while the fish is lying on its side. For black sea bass, *Total Length (TL)* means the straight-line distance from the tip of the snout to the end of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side.

Transboundary Management Guidance Committee (TMGC), with respect to the NE multispecies fishery, means the technical sub-committee that provides non-binding guidance to the U.S./Canada Steering Committee, comprised of government and industry representatives from U.S. and Canada.

Transboundary Resource Advisory Committee (TRAC), with respect to the NE multispecies fishery, means a committee consisting of scientific staff from NMFS and Canada's Department of Fisheries and Oceans that jointly assess the status of the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder.

Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

Transferee means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at § 648.82(l).

Transferor means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at § 648.82(l).

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Trip Identifier means the complete serial number of the vessel logbook page completed for that trip.

Tub-trawl, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

Tuna purse seine gear, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

Under construction means that the keel had been laid or the vessel was under written agreement for construction or the vessel was under written contract for purchase.

Upon returning to port, means, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, upon first tying up at a dock at the end of a fishing trip.

U.S. at-sea processing (USAP), with respect to the Atlantic herring fishery, means the specification, pursuant to § 648.200, of the amount of herring available for processing by U.S. vessels issued an Atlantic herring processing permit as described in § 648.4(a)(10)(ii).

U.S./Canada Steering Committee, with respect to the NE multispecies fishery, means the joint U.S./Canada committee consisting of staff from NMFS and Canada's Department of Fisheries and Oceans that has overall responsibility for the U.S./Canada Resource Sharing Understanding.

Used DAS baseline, with respect to the NE multispecies fishery, means the number of DAS that represent the historic level of DAS use associated with a particular limited access permit, as described in § 648.82(l).

Vessel length means the length specified on the USCG documentation for a vessel or on the state registration for a vessel not required to be documented under title 46 U.S.C., if the state length

is verified by an authorized officer or NMFS official.

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use on Atlantic sea scallop, NE multispecies, monkfish, Atlantic herring, and Atlantic surfclam and ocean quahog vessels, as required by this part.

VMS unit means a device installed on board a vessel used for vessel monitoring and transmitting the vessel's position as required by this part.

Weakfish means *Cynoscion regalis*.

Whiting means *Merluccius bilinearis*.

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small-mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 648.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705.

(b) Nothing in these regulations supersedes more restrictive state management measures for any of the species referenced in § 648.1 and, for Atlantic salmon, more restrictive local management measures.

§ 648.4 Vessel permits.

(a) *Fishery specific permit information*—(1) *NE multispecies vessels*. Except for vessels that have been issued a valid High Seas Fishing Compliance permit, have declared their intent to fish, and fish exclusively in the NAFO Regulatory Area as provided in § 648.17, any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess, or land multispecies finfish in or from the EEZ. Multispecies frames used as, or to be used as, bait on a vessel fishing exclusively with pot gear are deemed not to be multispecies finfish for purposes of this part provided that there is a receipt for the purchase of those frames on board the vessel.

(i) *Limited access multispecies permits*—(A) *Eligibility*. To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(A). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(b)(6), if it meets the criteria described under paragraphs (a)(1)(i)(A)(*1*) and (*2*) of this section.

(*1*) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(*2*) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(*3*) *Application/renewal restrictions*. The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(B) *Application/renewal restrictions*. All limited access or moratorium permits established under this section must be issued on an annual basis by the last day of the permit year for which the permit is required, unless a confirmation of permit history (CPH) has been issued as specified in paragraph (a)(1)(i)(J) of this section. If a vessel is issued more than one limited access or

moratorium permit under this section, these permits will be regarded as a permit suite. Permit renewal or relinquishment must be made at the time the first permit application is submitted for a new permit year. Application for limited access or moratorium permits must be received no later than 30 days before the last day of the permit year of the earliest expiration date for any permit in the suite of such permits issued to the vessel. Failure to renew a limited access or moratorium permit in any permit year bars the renewal of the permit in subsequent years. Open access permits may not be issued to a vessel eligible to renew a limited access or moratorium permit until such time that the vessel's limited access or moratorium permit(s) are renewed or voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section, or otherwise transferred from the vessel.

(C) *Qualification restriction*. Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Regional Administrator will determine who is entitled to qualify for the permit or CPH and any DAS allocation according to paragraph (a)(1)(i)(D) of this section.

(D) *Change in ownership*. The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(E) *Replacement vessels*. With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), an owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement per permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. To be eligible for a limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(*1*) The vessels's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(G) *Consolidation restriction*. Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(k), and the NE Multispecies DAS Transfer Program as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(I) *Limited access permit restrictions*. (*1*) A vessel may be issued a limited access NE multispecies permit in only one category during a fishing year. Vessels may not change limited access NE multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(I)(*2*) of this section. A vessel issued a limited access NE multispecies Hook-gear permit or a

limited access Handgear A permit may not change its limited access permit category at any time.

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a fishing year.

(*3*) With the exception of combination vessels, a vessel issued a limited access sea scallop dredge permit pursuant to paragraph (a)(2)(i) of this section is not eligible for limited access multispecies permits. This restriction is not applicable to vessels issued an LAGC scallop permit pursuant to paragraph (a)(2)(ii) of this section, unless such vessel has also been issued a limited access scallop permit pursuant to paragraph (a)(2)(i) of this section.

(J) *Confirmation of permit history*. Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of a limited access or moratorium permit*. If a vessel's limited access or moratorium permit for a particular fishery is voluntarily relinquished to the Regional Administrator or abandoned through failure to renew or otherwise, no limited access or moratorium permit for that fishery may be reissued or renewed based on that vessel's limited access or moratorium permit history or to any other vessel relying on that vessel's limited access or moratorium permit history.

(L) *Restriction on permit splitting*. A limited access permit issued pursuant to this section may not be issued to a vessel or its replacement or remain valid, if the vessel's permit or fishing

history has been used to qualify another vessel for another Federal fishery.

(M) *Appeal of denial of permit—(1) Eligibility*. Any applicant eligible to apply for a limited access multispecies Handgear A permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(*2*) *Appeal review*. The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal*. A vessel denied a limited access Handgear A multispecies permit may fish under the limited access multispecies Handgear A category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(ii) *Open access permits*. A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an ''open access multispecies'', ''handgear'', or ''charter/party'' permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access mulitspecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

(2) *Atlantic sea scallop vessels*. Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop vessel permit pursuant to this section.

(i) *Limited access scallop permits*. Any vessel of the United States that possesses or lands more than 400 lb (181.4 kg) of shucked scallops, or 50 bu (17.6 hL) of in-shell scallops per trip, or possesses more than 100 bu (35.2 hL) seaward of the VMS Demarcation Line, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

(A) *Eligibility*. To be eligible to apply for a limited access scallop permit, a vessel must have been issued a limited access scallop permit for the preceding year, be replacing a vessel that was issued a limited access scallop permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(1)(i)(H) of this section.

(I) *Limited access permit restrictions*. A vessel may be issued a limited access scallop permit in only one category during a fishing year. The owner of a vessel issued a limited access scallop permit must elect a permit category upon the vessels permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After this date, the vessel must remain in that permit category for the duration of the fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category.

(J) *Confirmation of Permit History*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(M) *Percentage ownership restrictions*. (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel, and/or a confirmation of permit history, if, as a result of the issuance of the permit and/or confirmation of permit history, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in a total number of limited access scallop vessels and limited access scallop confirmations of permit history in excess of 5 percent of the number of all limited access scallop vessels and confirmations of permit history at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 1995 and thereafter, in compliance with the ownership restrictions in paragraph (a)(2)(i)(M)(*1*) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

(*3*) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(N) [Reserved]

(O) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(P) *VMS requirement*. A vessel issued a limited access scallop permit, as specified in paragraph (a)(2)(i) of this section, except a vessel issued an occasional scallop permit that is not fishing in a sea scallop access area, must have an operational VMS installed. Prior to issuance of a limited access scallop permit, NMFS must receive a signed VMS certification from the vessel owner and be notified by the VMS vendor that the unit has been installed and is operational.

(ii) *LAGC scallop permits*. Any vessel of the United States that has not been issued a limited access scallop permit pursuant to paragraph (a)(2)(i) of this section, and any vessel issued a limited access scallop permit that fishes for scallops outside of the scallop DAS program described in § 648.53(b) or the Area Access program described in § 648.60, that possesses, retains, or lands scallops in or from Federal waters, must be issued an LAGC scallop permit and must comply with the permit requirements described in paragraphs (a)(2)(ii)(A), (B), or (C) of this section. To be issued an LAGC scallop permit, a vessel owner must meet the qualification criteria specified in paragraphs (a)(2)(ii)(D) or (F) of this section and must comply with the application procedures specified in paragraph (a)(2)(ii)(H) of this section.

(A) *Individual fishing quota LAGC permit*. To possess or land up to 400 lb

(181.4 kg) of shucked meats, or 50 bu (17.6 hL) of in-shell scallops per trip, or possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line, a vessel must have been issued an individual fishing quota LAGC scallop permit (IFQ scallop permit). Issuance of an initial IFQ scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(D) of this section.

(B) *Northern Gulf of Maine LAGC permit.* To possess or land up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) in-shell scallops per trip, or to possess up to 50 bu (17.6 hL) seaward of the VMS demarcation line in the NGOM Scallop Management Area, a vessel must have been issued a Northern Gulf of Maine LAGC scallop permit (NGOM scallop permit). A vessel issued a NGOM scallop permit may not fish for scallops outside of the NGOM Scallop Management Area as defined in § 648.62, and may not possess or land more than 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops at any time, except the vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial NGOM scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(F) of this section.

(C) *Incidental catch LAGC permit.* To possess or land up to 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) in-shell scallops per trip, or possess up to 10 bu (3.52 hL) in-shell scallops per trip seaward of the VMS demarcation line, but not more than these amounts per trip, a vessel must have been issued an incidental catch general category scallop permit (Incidental scallop permit). A vessel issued an incidental catch general scallop permit may not possess or land more than 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops at any time, except the vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial incidental catch category scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(G) of this section.

(D) *Eligibility for an IFQ scallop permit.* A vessel is eligible for and may be issued an IFQ scallop permit if it meets both eligibility criteria specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section, or is replacing a vessel that meets both the eligibility criteria specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section. A vessel owner may appeal NMFS's determination that a vessel does not meet the requirements specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section by complying with the appeal process, as specified in paragraph (a)(2)(ii)(O) of this section.

(*1*) *Permit criterion.* A vessel must have been issued a general category scallop permit in at least one scallop fishing year, as defined in § 648.2, between March 1, 2000, and November 1, 2004.

(*2*) *Landings criterion.* A vessel must have landed at least 1,000 lb (454 kg) of shucked scallops in any one year when the vessel also held a general category scallop permit as specified in paragraph (a)(2)(ii)(D)(*1*) of this section. To qualify, scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. NMFS dealer data shall be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.4 kg) of scallops on a trip, only 400 lb (181.4 kg) will be credited toward the landings criteria. For dealer reports that indicate that the landings were bushels of in-shell scallops, a conversion of 8 lb (3.63 kg) of scallop meats per bushel will be used to calculate meat-weight, up to the maximum of 400 lb (181.4 kg) per trip. For dealer reports that indicate that the landings were reported in pounds of in-shell scallops, the weight shall be converted to meat-weight using the formula of one pound (0.45 kg) of scallop meats for 8.33 lb (3.78 kg) of in-shell scallops, up to the maximum of 400 lb (181.4 kg) per trip, for qualification purposes.

(E) *Contribution factor for determining a vessel's IFQ.* An eligible IFQ scallop vessel's best year of scallop landings

during the qualification period of March 1, 2000, through November 1, 2004, as specified in § 648.53(h)(2)(ii)(A), and the vessel's number of years active, as specified in § 648.53(h)(2)(ii)(B), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(2)(ii)(C). A vessel owner that has applied for an IFQ scallop permit will be notified of the vessel's contribution factor at the time of issuance of the IFQ scallop permit, consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a. A vessel owner may appeal NMFS's determination of the IFQ scallop vessel's contribution factor by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

(F) *Eligibility for NGOM or Incidental scallop permit.* A vessel that is not eligible for, or for which the vessel's owner chooses not to apply for, an IFQ scallop permit, may be issued either a NGOM scallop permit or an Incidental scallop permit if the vessel was issued a general category scallop permit as of November 1, 2004, or if the vessel is replacing a vessel that was issued a general category scallop permit as of November 1, 2004. A vessel owner may appeal NMFS's determination that a vessel does not meet this criterion by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section. A vessel that qualifies for an IFQ scallop permit automatically qualifies for an NGOM or Incidental scallop permit if the vessel's owner chooses to be issued an NGOM or Incidental scallop permit instead of the IFQ scallop permit.

(G) *LAGC permit restrictions—(1) Change of permit category.—(i) IFQ scallop permit.* A vessel issued an IFQ scallop permit may not change its general category scallop permit category at any time without voluntarily relinquishing its IFQ scallop permit eligibility as specified in paragraph (a)(2)(ii)(M) of this section. If the vessel owner has elected to relinquish the vessel's IFQ permit and instead be issued an NGOM or Incidental scallop permit, the IFQ permit shall be permanently relinquished.

(*ii*) *NGOM and Incidental scallop permit.* A vessel may be issued either an NGOM or Incidental scallop permit for each fishing year, and a vessel owner may not change his/her LAGC scallop permit category during the fishing year, except as specified in this paragraph, (a)(2)(ii)(G)(*1*)(*ii*). The owners of a vessel issued an NOGM or Incidental scallop permit must elect a permit category in the vessel's permit application and shall have one opportunity each fishing year to request a change in its permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(*2*) *VMS requirement.* A vessel issued a LAGC permit must have an operational VMS installed. Issuance of an Atlantic sea scallop permit requires the vessel owner to submit a copy of the vendor's installation receipt or provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9.

(H) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section. Applications for a LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than August 30, 2008. Applications for LAGC permits that are not postmarked on or before August 30, 2008, may be denied and returned to the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce. If NMFS determines that the vessel owner has failed to pay a cost recovery fee in accordance with the cost recovery requirements specified at § 648.53(h)(4)(ii), the IFQ permit shall not be renewed.

(I) *Qualification restriction.* (*1*) See paragraph (a)(1)(i)(C) of this section for restrictions applicable to limited access scallop permits.

(*2*) Notwithstanding paragraph (a)(1)(i)(L) of this section, scallop landings history generated by separate owners of a single vessel at different times during the qualification period for LAGC scallop permits may be used to qualify more than one vessel, provided that each owner applying for an LAGC scallop permit demonstrates

that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(*3*) Notwithstanding paragraph (a)(1)(i)(L) of this section, a vessel owner applying for a LAGC permit who sold or transferred a vessel with non-scallop limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the general category scallop history of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before July 1, 2008, may use the general category scallop history to qualify a different vessel for the initial IFQ scallop permit, regardless of whether the history from the sold or transferred vessel was used to qualify another vessel for another limited access permit.

(J) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(K) *Replacement vessels*. A vessel owner may apply to replace a qualified LAGC vessel with another vessel that he/she owns. There are no size or horsepower restrictions on replacing general LAGC vessels, unless the qualified vessel that will be replaced is subject to such restriction because of other limited access permits issued pursuant to § 648.4. In order for a LAGC that also has other limited access permits issued pursuant to § 648.4 to be replaced by a vessel that does not meet the replacement and upgrade restrictions specified for those other limited access permits, the other limited access permits must be permanently relinquished, as specified in paragraph (a)(1)(i)(K) of this section.

(L) *Confirmation of Permit History*. See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting*. Except as provided in paragraphs (a)(2)(ii)(I)(*2*) and (*3*) of this section, paragraph (a)(1)(i)(L) of this section applies.

(O) *Appeal of denial of permit—(1) Eligibility*. Any applicant eligible to apply for an LAGC scallop permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal.

(*2*) *Contribution factor appeals*. Any applicant eligible to apply for a IFQ scallop permit who disputes NMFS's determination of the vessel's contribution factor specified in paragraph (a)(2)(ii)(E) of this section may appeal NMFS's determination to the Regional Administrator within 30 days of the notification of the vessel's best year and years active. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal. A vessel owner may appeal both the eligibility criteria and the contribution factor and must submit the appeal for both at the same time. An appeal of contribution factor determinations shall be reviewed concurrently with an eligibility appeal, if applicable.

(*3*) *Appeal review*. The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*4*) *Status of vessels pending appeal*. A vessel denied an LAGC scallop permit may fish while under appeal, provided

that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator temporarily authorizing the vessel to fish under the limited access general category permit. The Regional Administrator shall issue such a letter that shall be effective only during the pendency of any appeal. The temporary letter of authorization must be carried on board the vessel and all requirements of the permit category for which the appeal has been made shall apply. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the temporary authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial, regardless of the date of the owner's receipt of the denial.

(3) *Summer flounder vessels*. Any vessel of the United States that fishes for or retains summer flounder in the EEZ must have been issued and carry on board a valid summer flounder permit, except for vessels other than party or charter vessels that observe the possession limit set forth in § 648.105.

(i) *Moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.105 in the EEZ, a vessel must have been issued a summer flounder moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel as of March 22, 1999, unless the vessel is in the process of construction or rerigging or under agreement or written contract for construction or rerigging, as of the effective baseline specification date in which case the baseline specifications will be established no later than February 19, 2000.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permits*. Any party or charter boat is eligible for a permit to fish for summer flounder, other than a summer flounder moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits specified in § 648.105.

(iii) *Exemption permits*. Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104(b)(1) must request a letter of authorization (LOA) from the Regional Administrator. Vessels must be enrolled in the exemption program for a minimum of 7 days. The Regional Administrator may impose temporary additional procedural requirements by publishing a notification in the FEDERAL REGISTER. If a summer flounder charter or party requirement of this part differs from a summer flounder charter or party management measure required by a state, any vessel owners or operators fishing under the terms of a summer flounder charter/party vessel permit in the EEZ for summer flounder must comply with the more restrictive requirement while fishing in state waters, unless otherwise authorized under § 648.107.

(4) *Surf clam and ocean quahog vessels*. Any vessel of the United States that fishes for surf clams or ocean quahogs, except vessels taking surf clams and ocean quahogs for personal use or fishing exclusively within state waters, must have been issued and carry on board a valid surf clam or ocean quahog permit, respectively.

(i) *Maine mahogany quahog permit*. (A) A vessel is eligible for a Maine mahogany quahog permit to fish for ocean

quahogs in the Maine mahogany quahog zone if it meets the following eligibility criteria in paragraphs (a)(1) and (a)(2) of this section, and an application for a Maine mahogany quahog permit is submitted by May 19, 1999. After May 19, 1999, to be eligible to apply for a Maine mahogany quahog permit, a vessel must have been issued a Maine mahogany quahog permit for the preceding year, be replacing a vessel that was issued a Maine mahogany quahog permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(*1*) The vessel was issued a Federal Maine Mahogany Quahog Experimental Permit during one of the experimental fisheries authorized by the Regional Administrator between September 30, 1990, and September 30, 1997; and,

(*2*) The vessel landed at least one Maine bushel of ocean quahogs from the Maine mahogany quahog zone as documented by fishing or shellfish logs submitted to the Regional Administrator prior to January 1, 1998.

(B)*Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of denial of a permit*. (*1*) Any applicant denied a Maine mahogany quahog permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator's designee erred in concluding that the vessel did not meet the criteria in paragraph (a)(4)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator's designee was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator.

(*3*) The hearing officer shall make a recommendation to the Regional Administrator.

(*4*) The Regional Administrator will make a final decision based on the criteria in paragraph (a)(4)(i)(A) of this section and on the available record, including any relevant documentation submitted by the applicant and, if a hearing is held, the recommendation of the hearing officer. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(ii) *VMS Requirement*. (A) *Surfclam and ocean quahog open access permits*. In order to be eligible for issuance of an open access surfclam or ocean quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. The vessel owner/operator must activate the VMS unit and provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9. Verification is done by completing, signing, and mailing or faxing a VMS certification form to the NMFS Northeast Region Office of Law Enforcement.

(B) *Maine mahogany quahog limited access permit*. In order to be eligible for issuance of a Maine mahogany quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. By January 1, 2009, unless otherwise exempted under paragraph (a)(4)(ii)(B)(*1*) of this section. The vessel owner/operator must activate the VMS unit and provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9. Verification is done by completing, signing, and mailing or faxing a VMS certification form to the NMFS Northeast Region Office of Law Enforcement.

(*1*) *Special VMS exemption for Maine mahogany quahog vessels*. Vessel owners eligible to renew a limited access

Maine mahogany quahog permit may do so without proof of installation of a VMS, provided the vessel does not fish for, catch, or possess; or attempt to fish for, catch, or posses; Maine mahogany quahogs. Proof of VMS installation must be provided to the NMFS Northeast Region Office of Law Enforcement prior to departure on any fishing trip on which ocean quahogs may be caught or landed. Once a vessel issued a Maine mahogany quahog permit has elected to participate in the Maine mahogany quahog fishery, the vessel must keep the VMS unit turned on and functioning as specified under § 648.9. Once a limited access Maine mahogany quahog permitted vessel has participated in the Maine mahogany quahog fishery, this exemption no longer applies.

(*2*) [Reserved]

(5) *Mackerel, squid, and butterfish vessels*. Any vessel of the United States, including party and charter vessels, must have been issued and carry on board a valid vessel permit to fish for, possess, or land Atlantic mackerel, squid, or butterfish in or from the EEZ.

(i) *Loligo* squid/butterfish and *Illex* squid moratorium permits.

(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain *Loligo* squid, butterfish, or *Illex* squid in excess of the incidental catch allowance in paragraph (a)(5)(ii) of this section in the EEZ, a vessel must have been issued a *Loligo* squid and butterfish moratorium permit or *Illex* squid moratorium permit, as applicable, for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(ii) *Squid/butterfish incidental catch permit*. Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid or butterfish, or up to 10,000 lb (4.54 mt) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(iii) *Atlantic mackerel permit*. Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ, except for vessels that exceed either 165 feet in length overall (LOA) and 750 gross registered tons, or a shaft horsepower of 3000 shp. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified under § 648.6(a)(2).

(iv) *Party and charter boat permits*. The owner of any party or charter boat must obtain a permit to fish for or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

(6) *Scup vessels*. Beginning on January 1, 1997, and subject to the eligibility requirements specified in paragraphs (a)(6)(i) and (a)(6)(ii) of this section, the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for or retain scup for sale, barter or trade, in or from the EEZ north of 35°15.3′ N. lat. Any vessel, other than a party or charter boat, that observes the possession limit restrictions established pursuant to, and the prohibition on sale specified in, § 648.125 is exempt from the permit requirement.

(i) *Moratorium permit*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain scup, a vessel must have been issued a scup moratorium permit for the preceding year, be replacing a vessel that was issued a scup moratorium permit for

the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B)*Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permit*. Any party or charter boat is eligible for a permit to fish for scup, other than a scup moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits established pursuant to, and the prohibitions on sale specified in, § 648.125.

(7) *Black sea bass vessels*. Beginning June 1, 1997, any vessel of the United States that fishes for or retains black sea bass in or from the EEZ north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, must have been issued and carry on board a valid black sea bass moratorium permit, except for vessels other than party or charter vessels that observe the possession limit established pursuant to § 648.145.

(i) *Moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain black sea bass in excess of the possession limit established pursuant to § 648.145 in the EEZ north of 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, NC, a vessel must have been issued a black sea bass moratorium permit for the preceding year, be replacing a vessel that was issued a black sea bass moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permit*. The owner of any party or charter boat must obtain a permit to fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, while carrying passengers for hire.

(8) *Atlantic bluefish vessels*. (i) *Commercial*. Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels*. Any party or charter boat must have been issued and carry on board a valid party or charter boat permit to fish for, possess, or land Atlantic bluefish in or from the EEZ if it is carrying passengers for hire. Persons on board such vessel must observe the possession limits established pursuant to § 648.164, and the prohibitions on sale specified in § 648.14(w).

(9) *Monkfish vessels*. Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish permit to fish for, possess, or land any monkfish in or from the EEZ.

(i) *Limited access monkfish permits.* (A) *Eligibility.* A vessel may be issued a limited access monkfish permit if it meets any of the following limited access monkfish permits criteria:

(*1*) *Category A permit (vessels without NE multispecies or scallop limited access DAS permits).* The vessel landed at least 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*2*) *Category B permit (vessels less than 51 gross registered tonnage (GRT) without NE multispecies or scallop limited access DAS permits that do not qualify for a Category A permit).* The vessel landed at least 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*3*) *Category C permit (vessels with NE multispecies or scallop limited access DAS permits).* The vessel landed at least 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995; or

(*4*) *Category D permit (all vessels with NE multispecies limited access DAS permits and vessels less than 51 GRT with scallop limited access DAS permits that do not qualify for a Category C permit).* The vessel landed at least 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995.

(*5*) *Category F permit (vessels electing to participate in the Offshore Fishery Program*). To fish in the Offshore Fishery Program, as described under § 648.95, vessels must apply for and be issued a Category F permit and fish under this permit category for the entire fishing year. The owner of a vessel, or authorized representative, may change the vessel's limited access monkfish permit category within 45 days of the effective date of the vessel's permit, provided the vessel has not fished under the monkfish DAS program during that fishing year. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel's permit category will remain unchanged for the duration of the fishing year.

(*6*) *Category G permit (vessels restricted to fishing south of 38°40′ N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, or D permit).* The vessel landed at least 50,000 lb (22,680 kg) tail weight or 166,000 lb (75,296 kg) whole weight of monkfish in the area south of 38°00′ N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(*7*) *Category H permit (vessels restricted to fishing south of 38°40′ N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, D, or G permit).* The vessel landed at least 7,500 lb (3,402 kg) tail weight or 24,900 lb (11,294 kg) whole weight of monkfish in the area south of 38°00′ N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(B) *Application/renewal restrictions.* No one may apply for an initial limited access monkfish permit for a vessel after November 7, 2000, unless otherwise allowed in this paragraph (a)(9)(i)(B). Vessels applying for an initial limited access Category G or H permit, as described in paragraphs (a)(9)(i)(A)(*6*) and (*7*) of this section, must do so on or before April 30, 2006.

(C) *Qualification restrictions.* (*1*) See paragraph (a)(1)(i)(C) of this section.

(*2*) *Vessels under agreement for construction or under reconstruction.* A vessel may be issued a limited access monkfish permit if the vessel was under written agreement for construction or reconstruction between February 28, 1994, and February 27, 1995, and such vessel meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(D) *Change in ownership.* (*1*) See paragraph (a)(1)(i)(D) of this section.

(*2*) A vessel may be issued a limited access monkfish permit if it was under written agreement for purchase as of February 27, 1995 and meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(E) *Replacement vessels.* (*1*) See paragraph (a)(1)(i)(E) of this section.

(*2*) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set

forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(*2*) or (*4*) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(*4*) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel's history in lieu of, or in addition to, such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(6) and (7) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel*. (*1*) See paragraph (a)(1)(i)(F) of this section.

(*2*) A vessel ≥51 GRT that upgraded from a vessel size <51 GRT between February 27, 1995, and October 7, 1999, that meets any of the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraphs (a)(9)(i)(A)(*2*) and (*4*) of this section, may qualify for and fish under the permit category of the smaller vessel.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specification*. See paragraph (a)(1)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. A limited access monkfish permit may not be issued to a vessel or to its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Notification of eligibility for Category G and H permits*. (*1*) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available to inform them that they meet the qualification criteria described in paragraph (a)(9)(i)(A)(6) or (7) of this section and that they qualify for a limited access monkfish Category G or H permit. Vessel owners that prequalify for a Category G or H permit must apply for the limited access permit for which they pre-qualified on or before April 30, 2006, to meet the qualification requirements.

(*2*) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish Category G or H permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access monkfish Category G or H permit on or before April 30, 2006, by submitting written evidence that the vessel meets the qualification requirements described in paragraph (a)(9)(i)(A)(6) or (7) of this section.

(N) *Appeal of denial of permit*. (*1*) An applicant denied a limited access monkfish Category G or H permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria described in paragraph (a)(9)(i)(A)(6) or (7) of this section. The appeal shall set forth the applicant's belief that the Regional Administrator made an error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation

to the Regional Administrator. The Regional Administrator's decision on the appeal is the final decision of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* (*i*) A vessel denied a limited access monkfish Category G or H permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10(b) or (c), whichever applies. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the letter authorizing temporary participation in the monkfish fishery shall become invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the denial letter. If the appeal is approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(*ii*) *Monkfish incidental catch vessels (Category E).* A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit under paragraph (a)(9)(i)(A) of this section, is eligible for and may be issued a monkfish incidental catch (Category E) permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

(ii) [Reserved]

(10) *Atlantic herring vessels*—(i) Except as provided herein, any vessel of the United States must have been issued and have on board a valid Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(A) A vessel that possesses herring solely for its use as bait, providing the vessel does not use or have on board purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip in which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring;

(B) A skiff or other similar craft used exclusively to deploy the net in a purse seine operation during a fishing trip of a vessel that is duly permitted under this part; or

(C) At-sea processors that do not harvest fish, provided that at-sea processor vessels are issued the at-sea processor permit specified under § 648.6(a)(2).

(ii) *Atlantic herring carrier*. An Atlantic herring carrier must have been issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such a vessel from the VMS and IVR vessel reporting requirements as specified in § 648.7 and subpart K of this part, except as otherwise required by this part. An Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and must report all herring carried from each vessel on a given trip in its Fishing Vessel Trip Report. The Fishing Vessel Trip Report must include the vessel name. Carrier vessels under a letter of authorization may not conduct fishing activities except for purposes of transport or possess any fishing gear on board the vessel; must be used exclusively as an Atlantic herring carrier vessel; and must carry observers if required by NMFS. There is a minimum enrollment period of 7 calendar days. While operating under a valid LOA, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Herring carrier vessels under an LOA may not possess, transfer, or land any species except for Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels.

(iii) *Vessel size limitation*. A vessel of the United States is eligible for and

may be issued an Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ, except for any vessel that is ≥165 ft (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel's total main propulsion machinery is > 3,000 horsepower. Vessels that exceed the size or horsepower restrictions are eligible to be issued an at-sea processing permit specified under § 648.6(a)(2)(ii).

(iv) *Limited access herring permits*. (A) A vessel of the United States that fishes for, possesses, or lands more than 6,600 lb (3 mt) of herring, except vessels that fish exclusively in state waters for herring, must have been issued and carry on board one of the limited access herring permits described in paragraphs (a)(10)(iv)(A)(*1*)–(*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *All Areas Limited Access Herring Permit*. A vessel may fish for, possess, and land unlimited amounts of herring from all herring areas, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Areas 2 and 3 Limited Access Herring Permit*. A vessel may fish for, possess, and land unlimited amounts of herring from herring Areas 2 and 3, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Limited Access Incidental Catch Herring Permit*. (*i*) A vessel that does not qualify for either of the permits specified in paragraphs (a)(10)(iv)(A)(*1*) and (*2*) of this section may fish for, possess, and land up to 55,000 lb (25 mt) of herring from any herring area, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*ii*) A vessel that does not qualify for an All Areas Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*1*) of this section, but qualifies for the Areas 2 and 3 Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*2*) of this section, may fish for, possess, and land up to 55,000 lb (25 mt) of herring from Area 1, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(B) *Eligibility for All Areas and Areas 2 and 3 Limited Access Herring Permits, and Confirmation of Permit History (CPH)*. A vessel is eligible for and may be issued either an All Areas or Areas 2 and 3 Limited Access Herring Permit if it meets the permit history criteria in paragraph (a)(10)(iv)(B)(*1*) of this section and the relevant landing requirements in paragraphs (a)(10)(iv)(B)(*2*) and (*3*) of this section.

(*1*) *Permit history criteria for All Areas and Areas 2 and 3 Permits*. (*i*) The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for the All Areas Limited Access Herring Permit*–(*i*) The vessel must have landed at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to

qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction, or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*2*)(*i*) of this section through December 31, 2004.

(*iii*) Landings criteria for vessels using landings from pair trawl operations. To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as verified by dealer reports submitted to NMFS or valid dealer receipts, if dealer reports were not required by NMFS.

(*3*) *Landings criteria for the Areas 2 and 3 Limited Access Herring Permit.* (*i*) The vessel must have landed at least 250 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*3*)(*i*) of this section through December 31, 2004.

(*iii*) *Landings criteria for vessels using landings from pair trawl operations.* See paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section.

(*4*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(B) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(C) *Eligibility for Incidental Catch Limited Access Herring Permit, and CPH.* A vessel is eligible for and may be issued an Incidental Limited Access Herring Permit if it meets the permit history criteria specified in paragraph (a)(10)(iv)(C)(*1*) of this section and the landings criteria in paragraph (a)(10)(iv)(C)(*2*) of this section.

(*1*) *Permit history criteria.* (*i*) The vessel must have been issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, *Loligo* or *Illex* squid, or butterfish that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, *Loligo* or *Illex* squid, or butterfish that was issued between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel

owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for Incidental Catch Limited Access Herring Permit.* (*i*) The vessel must have landed at least 15 mt of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to the vessel's landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(C)(*2*)(*i*) of this section through December 31, 2004.

(*3*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(C) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(D) *Application/renewal restrictions.* (*1*) No one may apply for an initial limited access Atlantic herring permit or a CPH under paragraph (a)(10)(iv)(L) of this section after May 31, 2008, or after the abandonment or voluntary relinquishment of permit history as specified in paragraph (a)(10)(iv)(M) of this section.

(*2*) An applicant who submits written proof that an eligible vessel was sold, with the seller retaining the herring history through a written agreement signed by both parties to the sale or transfer, may not utilize such history if the vessel's history was used to qualify another vessel for another limited access permit.

(*3*) All limited access permits established under this section must be issued on an annual basis by April 30, the last day of the year for which the permit is issued, unless a CPH has been issued as specified in paragraph (a)(10)(iv)(L) of this section. Application for such permits must be received no later than March 31, which is 30 days before the last day of the permit year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(E) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(F) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(H) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(I) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(J) *Vessel baseline specifications.* See paragraph (a)(1)(i)(H) of this section. If a herring CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated.

(K) *Limited access permit restrictions*. [Reserved]

(L) *Confirmation of Permit History*. See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section. Notwithstanding paragraph (a)(1)(i)(L), vessel owners applying for a limited access herring permit who sold vessels with limited access permits and retained the herring history before applying for the initial limited access herring permit may not use the herring history to qualify a vessel for the initial limited access herring permit, if the issuance of such permit would violate the restrictions on permit splitting. Furthermore, notwithstanding paragraph (a)(1)(i)(L), for the purposes of the Atlantic herring fishery, herrings landings history generated by separate owners of a single vessel at different times may be used the qualify more than one vessel, provided that each owner applying for a limited access permit, demonstrates that he/she created distinct fishing histories, and that such histories have been retained.

(O) *Appeal of denial of permit–(1) Eligibility*. Any applicant eligible to apply for a limited access herring permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was based on incorrect data. The appeal must be in writing, and must state the specific grounds for the appeal.

(*2*) *Appeal review*. The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal*. A vessel denied a limited access herring permit may fish under the limited access herring permit, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator shall issue such a letter for the pendency of any appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(v) *Open access herring permit*. A vessel that has not been issued a limited access Atlantic herring permit may obtain an open access incidental Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip, and is limited to one landing per calendar day.

(11) *Spiny dogfish vessels*. Any vessel of the United States that commercially fishes for, possesses, or lands spiny dogfish in or from the EEZ must have been issued and carry on board a valid commercial spiny dogfish vessel permit.

(12) *Tilefish vessels*. Any vessel of the United States must have been issued and carry on board a valid tilefish vessel permit to fish for, possess, or land tilefish in or from the tilefish management unit.

(i) *Limited access tilefish permits*—(A) *Eligibility*. A vessel may be issued a limited access tilefish permit if it meets any of the following limited access tilefish permit criteria, provided that the vessel landed the specified amounts of tilefish to meet such criteria within the tilefish management unit:

(*1*) *Full-time tier 1 category*. The vessel landed at least 250,000 lb (113,430 kg) of

tilefish per year for any 3 years between 1993 and 1998, at least 1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(*2*) *Full-time tier 2 category*. The vessel landed at least 30,000 lb (13,612 kg) per year for any of 3 years between 1993 and 1998, at least 1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(*3*) *Part-time category*. The vessel landed 10,000 lb (4,537 kg) of tilefish in any 1 year between 1988 and 1993 and 10,000 lb (4,537 kg) in any 1 year between 1994 and 1998, or landed 28,000 lb (12,904 kg) of tilefish in any 1 year between 1984 and 1993, at least 1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(B) *Application/renewal restriction*—(*1*) *Initial application*. A vessel owner must apply for an initial limited access tilefish permit before November 1, 2002, one year from the effective date of the regulations.

(*2*) For fishing years beyond the initial application year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(C) *Qualification restrictions*. The provisions of paragraph (a)(1)(i)(C) of this section apply.

(D) *Change in ownership*. The provisions of paragraph (a)(1)(i)(D) of this section apply.

(E) *Replacement vessels*. The provisions of paragraph (a)(1)(i)(E) of this section apply.

(F) *Upgraded vessel*. The provisions of paragraph (a)(1)(i)(F) of this section apply.

(G) *Consolidation restriction*. The provisions of paragraph (a)(1)(i)(G) of this section apply.

(H) *Vessel baseline specifications*. The provisions of paragraph (a)(1)(i)(H) of this section apply.

(I) *Limited access permit restrictions*. (*1*) A vessel may be issued a limited access tilefish permit for only one category during a fishing year.

(*2*) A vessel issued a limited access tilefish permit may not be issued an incidental catch tilefish permit during a fishing year.

(J) *Confirmation of permit history*. The provisions of paragraph (a)(1)(i)(J) of this section apply.

(K) Abandonment or voluntary relinquishment of permits. The provisions of paragraph (a)(1)(i)(K) of this section apply.

(L) *Restriction on permit splitting*. The provisions of paragraph (a)(1)(i)(L) of this section apply.

(M) *Appeal of denial of a permit*. (*1*) Any applicant denied a tilefish limited access permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraphs (a)(12)(i)(A)(*1*),(*2*), or (*3*) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(*3*) Status of vessels pending appeal. A vessel denied a limited access tilefish permit may fish, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish. The Regional Administrator will issue such a letter for the pendency of any appeal. The decision on the appeal is the final administrative action of the Department of Commerce. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial.

(ii) *Tilefish incidental catch permit*. A vessel of the United States that is subject to these regulations and that has not been issued a limited access tilefish permit is eligible for and may be issued a tilefish incidental catch permit to possess or land tilefish in or from the tilefish management unit. Such vessel is subject to the restrictions in § 648.292.

(13) *Red Crab vessels*. Any vessel of the United States must have been issued

and have on board a valid red crab vessel permit to fish for, catch, possess, transport, land, sell, trade, or barter, any red crab or red crab part in or from the EEZ portion of the Red Crab Management Unit.

(i) *Limited access red crab permit*—(A) *Eligibility*. A vessel, or its replacement, may be issued a limited access red crab permit if the vessel's total landings averaged greater than 250,000 lb (113,400 kg) of red crab per year for the 3 years beginning March 1, 1997, through February 29, 2000. To calculate the average value per year, the total landings of whole red crab, or its equivalent by weight, between March 1, 1997, and February 29, 2000, inclusive, shall be divided by 3. If the quotient is greater than 250,000 lb (113,400 kg), the vessel meets the landings criteria. For example, if a vessel caught greater than 750,000 lb (340,200 kg) in the 3-year qualifying time span—even if it fished just 2 of those 3 years—the average per year would be greater than 250,000 lb (113,400 kg).

(B) *Application/renewal restriction*—(*1*) *Initial application for 2002*. A vessel owner must apply for an initial limited access red crab permit before April 8, 2003. No vessel owner may apply for an initial limited access red crab permit after this date.

(*2*) *Fishing years 2003 and beyond*. (*i*) For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(*ii*) A limited-access permit holder may choose to declare out of the red crab fishery for the next fishing year by submitting a binding declaration on a form supplied by the Regional Administrator, which must be received by NMFS at least 180 days before the last day of the current fishing year. NMFS will presume that a vessel intends to fish during the next fishing year unless such binding declaration is received at least 180 days before the last day of the current fishing year. Any limited-access permit holder who has submitted a binding declaration must submit either a new binding declaration or a renewal application for the year after which they were declared out of the fishery.

(C) *Qualification restrictions*. The provisions of paragraph (a)(1)(i)(C) of this section apply.

(D) *Change in ownership*. The provisions of paragraph (a)(1)(i)(D) of this section apply.

(E) *Replacement vessels*. (*1*) To be eligible for a limited access permit under this section, the replacement vessel's length, GRT, and NT may not exceed by greater than 10 percent the length, GRT, and NT of the vessel's baseline specifications. The replacement vessel must also meet any other applicable criteria under paragraph (a)(13)(i)(F) of this section.

(*2*) A vessel that lawfully replaced a vessel that meets the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed red crab between March 1, 1997, and February 29, 2000, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, provided that the vessel's length, GRT, and NT is increased no more than once. Any increase in any of the aforementioned specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any increase in any of the aforementioned specifications of vessel size occurs, any increase in the other specifications must be performed at the same time.

(G) *Consolidation restriction*. The provisions of paragraph (a)(1)(i)(G) of this section apply.

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, GRT, and NT) of the vessel indicated on the vessel's initial limited access permit as of the date the initial vessel applies for such permit.

(I) *Limited access permit restrictions.* A vessel issued a limited access red crab permit may not be issued a red crab incidental catch permit during the same fishing year.

(J) *Confirmation of permit history (CPH).* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person and has not been replaced, must apply for and receive a CPH that confirms the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel met the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(13)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* The provisions of paragraph (a)(1)(i)(K) of this section apply.

(L) *Restriction on permit splitting.* The provisions of paragraph (a)(1)(i)(L) of this section apply.

(M) *Notification of eligibility for 2002.* (*1*) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the qualification criteria described in paragraph (a)(13)(i)(A) of this section and that they qualify for a limited access red crab permit. Vessel owners must still apply by April 8, 2003 to complete the qualification requirements.

(*2*) If the vessel owner has not been notified that the vessel is eligible to be issued a limited access red crab permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access red crab permit by April 8, 2003 by submitting evidence that the vessel meets the requirements described in paragraph (a)(13)(i)(A) of this section.

(N) *Appeal of denial of a permit.* *(1)* Any applicant denied a limited access red crab permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(13)(i)(A) of this section. The appeal must set forth in writing the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(3) *Status of vessels pending appeal.* A vessel denied a limited access red crab permit may fish for and land red crab as if a limited access permit had been issued, provided that the denial has been appealed, the appeal is pending, the vessel owner has presented prima facie evidence that the decision was made in error, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish. During the appeal, the vessel may only land up to 75,000 lb (34,019 kg) of red crab per trip. The Regional Administrator will issue such a letter for the pendency of any appeal. The decision on the appeal is the final administrative action of the Department of Commerce. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial.

(ii) *Red crab incidental catch permit.* A vessel of the United States that is subject to these regulations and that has not been issued a red crab limited access permit is eligible for and may be issued a red crab incidental catch permit to catch, possess, transport, land, sell, trade, barter, up to 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit. Such vessel is subject to the restrictions in § 648.263(b).

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

(b) *Permit conditions.* (1)(i) Any person who applies for and is issued or renews a fishing permit under this section agrees, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed); are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part, except tilefish, must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium; or a spiny dogfish or bluefish commercial vessel permit, must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the FEDERAL REGISTER stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the FEDERAL REGISTER stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must

comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

(ii) Any person who applies for or has been issued a limited access or moratorium permit on or after September 4, 2007 agrees, as a condition of the permit, that the vessel may not fish for, catch, possess, or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent permit year, or the permit either has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(2) A vessel that is issued or renewed a limited access or moratorium permit on or after September 4, 2007 for any fishery governed under this section is prohibited from fishing for, catching, possessing, and/or landing any fish for which the vessel would be authorized under the respective limited access or moratorium permit in or from state and/or Federal waters in any subsequent permit year, unless and until the limited access or moratorium permit has been issued or renewed pursuant to paragraph (a)(1)(i)(B) of this section and the valid permit is on board the vessel. This prohibition does not apply to a vessel for which the limited access or moratorium permit has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(c) *Permit applications*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. The application must be signed and submitted to the Regional Administrator at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. Vessel owners who are eligible to apply for limited access or moratorium permits under this part shall provide information with the application sufficient for the Regional Administrator to determine whether the vessel meets the applicable eligibility requirements specified in this section.

(2) *Vessel permit information requirements.* (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable), home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category, if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

(ii) An application for an initial limited access multispecies hook-gear permit must also contain the following information:

(A) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit before July 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date on which the contract was signed.

(B) If the length, GRT, or NT was changed or a contract to change the length, GRT, or NT had been entered into prior to July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit, sufficient documentation to ascertain the different length, GRT, or NT. However, the upgrade must be completed within 1 year from the date on which the contract was signed.

(iii) An application for a limited access NE multispecies permit must also contain the following information:

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(B) [Reserved]

(iv) An application for a scallop permit must also contain the following information:

(A) For every person named by applicants for limited access scallop permits pursuant to paragraph (c)(2)(i) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for.

(B) If applying for a VMS general scallop permit, or full-time or part-time limited access scallop permit, or if opting to use a VMS unit, a copy of the vendor installation receipt or proof of vendor activation of the VMS from a NMFS-approved VMS vendor. NMFS-approved vendors are described in § 648.9.

(C) If applying to fish under the small dredge program set forth under § 648.51(e), an annual declaration into the program.

(v) An application for a surf clam and ocean quahog permit must also contain the pump horsepower.

(vi) Prior to issuance of a limited access Atlantic herring permit, a VMS unit provided by a NMFS-approved vendor must be installed and NMFS must receive a notice from the vendor that the VMS is activated.

(d) *Fees*. The Regional Administrator may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance*. (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue a permit within 30 days of receipt of the application, unless the application is deemed incomplete for the following reasons:

(i) The applicant has failed to submit a complete application. An application

is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified in § 648.7;

(ii) The application was not received by the Regional Administrator by the applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section;

(iv) An applicant for a limited access multispecies combination vessel or individual DAS permit, a limited access scallop permit (except an occasional scallop permit), an LAGC scallop permit, or electing to use a VMS, has failed to meet all of the VMS requirements specified in §§ 648.9 and 648.10; or

(v) The applicant has failed to meet any other application requirements stated in this part.

(2) *Incomplete applications.* Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Administrator shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Change in permit information.* Any change in the information specified in paragraphs (c)(2) or (c)(3) of this section must be submitted by the applicant in writing to the Regional Administrator within 15 days of the change, or the permit is void.

(g) *Expiration.* A permit expires upon the renewal date specified in the permit.

(h) *Duration.* A permit will continue in effect unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as specified in paragraph (f) of this section. However, the Regional Administrator may authorize the continuation of a permit if the new owner so requests. Applications for permit continuations must be addressed to the Regional Administrator.

(i) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(j) *Reissuance.* A permit may be reissued by the Regional Administrator when requested in writing, stating the need for reissuance, the name of the vessel (if applicable), and the fishing permit number assigned. An application for the reissuance of a permit will not be considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(k) *Transfer.* A permit issued under this part is not transferable or assignable. A permit will be valid only for the fishing vessel, owner and/or person for which it is issued.

(l) *Display.* A vessel permit must be carried, at all times, on board the vessel for which it is issued and shall be subject to inspection upon request by any authorized officer. A person issued a permit under this section must be able to present the permit for inspection when requested by an authorized officer. Permits must be maintained in legible condition.

(m) *Sanctions.* The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing enforcement-related permit sanctions or denials are found at subpart D of 15 CFR part 904.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing: Atlantic sea scallops, NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued

a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

(b) *Operator permit application*. Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Administrator. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Condition*. Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) are subject to all requirements of this part while fishing in the EEZ or on board a vessel for which a permit is issued under § 648.4, unless exempted from such requirements under § 648.12. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements*. An applicant must provide at least all the following information and any other information required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; and signature of the applicant. The applicant must also provide two recent (no more than 1 year old), color, passport-size photographs.

(e) *Fees*. Same as § 648.4(d).

(f) *Issuance*. Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue an operator's permit within 30 days of receipt of a completed application, if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration*. Same as § 648.4(g).

(h) *Duration*. A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Administrator as specified in paragraph (k) of this section.

(i) *Reissuance*. Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal operator permit number assigned. An applicant for a reissued permit must also provide two recent, color, passport-size photos of the applicant. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer*. Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in permit application information*. Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Administrator within 15 days of the change in information. If written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(l) *Alteration*. Same as § 648.4(i).

(m) *Display*. Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer or NMFS official.

(n) *Sanctions*. Vessel operators with suspended or revoked permits may not be aboard a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility*. Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 64 FR 57593, Oct. 26, 1999; 64 FR 66587, Nov. 29, 1999; 65 FR 45851, July 26, 2000; 65 FR 77465, Dec. 11, 2000; 66 FR 49143, Sept. 26, 2001; 67 FR 63231, Oct. 10, 2002; 68 FR 49699, Aug. 19, 2003; 69 FR 62821, Oct. 28, 2004; 70 FR 21982, Apr. 28, 2005; 73 FR 20119, Apr. 14, 2008]

§ 648.6 Dealer/processor permits.

(a) *General*. (1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; Atlantic hagfish dealers and/or processors, and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species.

(2) *At-sea processors*–(i) *At-sea mackerel processors*. Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess, and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

(ii) *Atlantic herring at-sea processing permit*. A vessel of the United States, including a vessel that is > 165 ft (50.3 m) length overall, or > 750 GRT (680.4 mt), is eligible to obtain an Atlantic herring at-sea processing permit to receive and process Atlantic herring subject to the U.S. at-sea processing (USAP) allocation published by the Regional Administrator pursuant to § 648.200. Such a vessel may not receive and process Atlantic herring caught in or from the EEZ unless the vessel has been issued and has on board an Atlantic herring at-sea processing permit.

(iii) *Reporting requirements*. An at-sea processor receiving Atlantic mackerel or Atlantic herring is subject to dealer reporting requirements specified in § 648.7(a).

(b) *Dealer/processor permit applications*. Same as § 648.5(b).

(c) *Information requirements*. Applications must contain at least the following information, as applicable, and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the partnership agreement and the names and addresses of all partners, if the business is a partnership, name of at-sea processor vessel, and current vessel documentation papers.

(d) *Fees*. Same as § 648.4(d).

(e) *Issuance*. Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit at any time during the fishing year to an applicant, unless the applicant fails to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 648.7 during the 12 months immediately preceding the application. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency

within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration*. Same as § 648.4(g).

(g) *Duration*. A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as required by paragraph (j) of this section.

(h) *Reissuance*. Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal dealer permit number assigned. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer*. Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information*. Same as § 648.5(k).

(k) *Alteration*. Same as § 648.4(i).

(l) *Display*. Same as § 648.5(m).

(m) *Federal versus state requirements*. If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions*. Same as § 648.4(m).

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 64 FR 57593, Oct. 26, 1999; 65 FR 45851, July 26, 2000; 65 FR 77465, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49699, Aug. 19, 2003; 69 FR 4864, Feb. 2, 2004; 69 FR 16178, Mar. 29, 2004; 69 FR 30841, June 1, 2004; 72 FR 20038, Apr. 23, 2007; 72 FR 11273, Mar. 12, 2007]

§ 648.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Detailed report*. Federally permitted dealers must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for commercial purposes, other than solely for transport on land, within the time periods specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information*. All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions*. The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Northeast Region under this part, and American lobster, managed under part 697 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic

bluefin tuna under this part. Other reporting requirements, as specified in § 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. NMFS will provide dealers with a skate species identification guide.

(2) *System requirements.* All persons required to submit reports under paragraph (a)(1) of this section are required to have the capability to transmit data via the Internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum specifications identified by NMFS. The affected public will be notified of the minimum specifications via a letter to all Federal dealer permit holders.

(3) *Annual report.* All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surfclam and ocean quahog processors and dealers whose plant processing capacities change more than 10 percent during any year shall notify the Regional Administrator in writing within 10 days after the change.

(iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.

(iv) Atlantic hagfish processors must complete and submit all sections of the Annual Processed Products Report.

(b) *Vessel owners or operators*—(1) *Fishing Vessel Trip Reports*— (i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. As stated in paragraph (f)(2)(i) of this section, if no fishing trip is made during a month, a report stating so must be submitted for each month. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (i.e., less than 23 inches (58.42 cm), total length) or ''large'' (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

(ii) *Surf clam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surf clam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surf clam and ocean quahog fishing vessel permit, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Administrator, showing at least: Name and permit number of the vessel, total

amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surf clams and ocean quahogs discarded, and allocation permit number.

(iii) *Vessel reporting requirements for skates*. In addition to the requirements under paragraph (b)(1)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. NOAA Fisheries will provide vessel owners or operators that intend to land skates with a skate identification guide to assist in this data collection program.

(2) *IVR system reports*—(i) *Atlantic herring owners or operators*. The owner or operator of a vessel issued a permit to fish for Atlantic herring must report catches (retained and discarded) of herring each week to an IVR system, as specified in paragraphs (b)(2)(i)(A) and (B) of this section. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, week in which species are caught, pounds retained, pounds discarded, management areas fished, and pounds of herring caught in each management area for the week. The IVR reporting week begins on Sunday at 0001 hrs (12:01 AM) local time and ends Saturday at 2400 hrs (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit must submit an Atlantic herring catch report via the IVR system each week, regardless of how much herring is caught (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued an open access permit for Atlantic herring that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(D) *Reporting requirements for vessels transferring herring at sea*. A vessel that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(*1*) A vessel that transfers herring at sea to a vessel that receives it for personal use at bait must report all transfers on the Fishing Vessel Trip Report.

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(*3*) A vessel that transfers herring at sea to an at-sea processor must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(*4*) A transfer between two vessels issued valid Atlantic herring permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring

at sea, and a weekly IVR report for the amount of herring each vessel lands.

(ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which species are caught, and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

(iii) *Red crab vessel owners and operators.* The owner or operator of any vessel issued a limited access permit for red crab must submit a red crab catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, DAS confirmation number, trip during which species are caught, date landed, condition (whole, half sections with gills, half sections without gills), and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port with fish. Information that may be considered unascertainable prior to entering port with fish includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.

(d) *Inspection.* All persons required to submit reports under this section, upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Administrator to make such inspections, must make immediately available for inspection copies of the required reports and the records upon which the reports are or will be based. At any time during or after a trip, vessel owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(e) *Record retention.* Records upon which trip-level reports are based must be retained and be available for immediate review for a total of 3 years after the date of the last entry on the report. Dealers must retain the required records at their principal place of business. Copies of fishing log reports must be kept on board the vessel and available for review for at least 1 year and must be retained for a total of 3 years after the date of the last entry on the log.

(f) *Submitting reports*—(1) *Dealer or processor reports.* (i) Detailed reports required by paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week.

(ii) [Reserved]

(iii) Dealers who want to make corrections to their trip-level reports via the electronic editing features may do so for up to 3 business days following submission of the initial report. If a correction is needed more than 3 business days following the submission of the initial trip-level report, the dealer must contact NMFS directly to request an extension of time to make the correction.

(iv) Through April 30, 2005, to accommodate the potential lag in availability of some required data, the trip identifier, price and disposition information required under paragraph (a)(1) may be submitted after the detailed weekly report, but must be received within 16 days of the end of the reporting week or the end of the calendar month, whichever is later. Dealers will be able to access and update previously submitted trip identifier, price, and disposition data.

(v) Effective May 1, 2005, the trip identifier required under paragraph (a)(1) of this section must be submitted with the detailed report, as required under paragraphs (f)(1)(i) of this section. Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

(vi) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to § 600.502) for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* (i) Fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which reports are to be submitted, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report stating so must be submitted.

(ii) Surfclam and ocean quahog log reports, required by paragraph (b)(1)(ii) of this section, must be postmarked or received within 3 days after the end of each reporting week.

(3) *At-sea purchasers and processors.* With the exception of the owner or operator of an Atlantic herring carrier vessel, the owner or operator of an at-sea purchaser or processor that purchases or processes any Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

(g) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 62 FR 14646, Mar. 27, 1997; 63 FR 52640, Oct. 1, 1998; 63 FR 58329, Oct. 30, 1998; 64 FR 57593, Oct. 26, 1999; 65 FR 1569, Jan. 11, 2000; 65 FR 45851, July 26, 2000; 65 FR 60895, Oct. 13, 2000; 65 FR 77465, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 67 FR 3444, Jan. 24, 2002; 67 FR 63231, Oct. 10, 2002; 68 FR 49699, Aug. 19, 2003; 69 FR 13495, Mar. 23, 2004; 70 FR 21982, Apr. 28, 2005; 72 FR 4216, Jan. 30, 2007; 72 FR 11274, Mar. 12, 2007; 72 FR 20038, Apr. 23, 2007; 72 FR 43192, Aug. 3, 2007]

§ 648.8 Vessel identification.

(a) *Vessel name and official number.* Each fishing vessel subject to this part and over 25 ft (7.6 m) in registered length must:

(1) Affix permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(2) Display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals.* Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner.* The owner of each vessel subject to this part shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(d) *Non-permanent marking.* Vessels carrying recreational fishing parties on

a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements.

(e) *New Jersey surf clam or ocean quahog vessels*. Instead of complying with paragraph (a) of this section, surf clam or ocean quahog vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that state.

§ 648.9 VMS requirements.

(a) *Approval*. The Regional Administrator will annually approve VMSs that meet the minimum performance criteria specified in paragraph (b) of this section. Any changes to the performance criteria will be published annually in the FEDERAL REGISTER and a list of approved VMSs will be published in the FEDERAL REGISTER upon addition or deletion of a VMS from the list. In the event that a VMS is deleted from the list, vessel owners that purchased a VMS unit that is part of that VMS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Administrator.

(b) *Minimum VMS performance criteria*. The basic required features of the VMS are as follows:

(1) The VMS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(2) The VMS shall be fully automatic and operational at all times, regardless of weather and environmental conditions, unless exempted under paragraph (c)(2) of this section.

(3) The VMS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nm offshore and shall provide position accuracy to within 400 m (1,300 ft).

(4) The VMS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude.

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification, ''real time'' shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

(6) The VMS shall be capable of providing network message communications between the vessel and shore. The VMS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VMS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in a file format acceptable to NMFS.

(8) The VMS shall be capable of providing vessel locations relative to international boundaries and fishery management areas.

(9) The VMS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(c) *Operating requirements for all vessels*. (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) or (iii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

(i) At least every hour, 24 hours a day, throughout the year.

(ii) [Reserved]

(iii) At least twice per hour, 24 hrs. a day, throughout the year, for vessels issued a scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(B).

(2) *Power down exemption.* (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), or an Atlantic sea scallop permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such vessels must activate the VMS unit and enter the appropriate activity code prior to leaving port.

(D) The vessel has been issued an LAGC scallop permit, is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power-down code that the VMS will be powered down, and the vessel is not required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS and submit a valid VMS activity declaration prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.

(ii) *Letter of exemption*—(A) *Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (*i.e.,* the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

(d) *Presumption.* If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies or monkfish fishery, as applicable, or was not at sea.

(e) *New and replacement VMS installations.* The vessel owner/operator required to use a VMS must provide to the NMFS Northeast Region Office of Law Enforcement verification of vendor activation prior to departure on a fishing trip requiring VMS. A VMS certification of installation form is available from the NMFS Regional Administrator. Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying that the new VMS unit is an

operational, approved system as described under paragraph (a) of this section. Vessel owners required to use a VMS in the Atlantic surfclam and ocean quahog fishery, as specified at § 648.15(b), must confirm the VMS operation and communications service to NMFS by calling 978–281–9213 to ensure that position reports are automatically sent to and received by NMFS Office of Law Enforcement (OLE). For the Atlantic surfclam and ocean quahog fishery, NMFS does not regard the fishing vessel as meeting the VMS requirements until automatic position reports and a manual declaration are received.

(f) *Access*. As a condition to obtaining a limited access scallop or multispecies permit, or an Atlantic herring permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

(g) *Tampering*. Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or accuracy of computing the vessel's position fix.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14646, Mar. 27, 1997; 63 FR 58329, Oct. 30, 1998; 64 FR 54745, Oct. 7, 1999; 65 FR 77466, Dec. 11, 2000; 69 FR 22946, Apr. 27, 2004; 69 FR 67796, Nov. 19, 2004; 70 FR 21941, Apr. 28, 2005; 70 FR 48867, Aug. 22, 2005; 70 FR 76426, Dec. 27, 2005; 71 FR 33224, June 8, 2006; 72 FR 11274, Mar. 12, 2007; 72 FR 51702, Sept. 11, 2007; 72 FR 73278, Dec. 27, 2007; 73 FR 20119, Apr. 14, 2008; 73 FR 30802, May 29, 2008]

§ 648.10 DAS and VMS notification requirements.

(a) *VMS Demarcation Line*. The VMS Demarcation Line is defined by straight lines connecting the following coordinates in the order stated (a copy of a map showing the line is available from the Regional Administrator upon request):

VMS DEMARCATION LINE

Description	N. Lat.	W. Long.
1. Northern terminus point (Canada landmass)	45°03′	66°47′
2. A point east of West Quoddy Head Light	44°48.9′	66°56.1′
3. A point east of Little River Light	44°39.0′	67°10.5′
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6′	68°10.8′
5. Isle au Haut Light	44°03.9′	68°39.1′
6. Pemaquid Point Light	43°50.2′	69°30.4′
7. A point west of Halfway Rock	43°38.0′	70°05.0′
8. A point east of Cape Neddick Light	43°09.9′	70°34.5′
9. Merrimack River Entrance "MR" Whistle Buoy	42°48.6′	70°47.1′
10. Halibut Point Gong Buoy "1AHP"	42°42.0′	70°37.5′
11. Connecting reference point	42°40′	70°30′
12. Whistle Buoy "2" off Eastern Point	42°34.3′	70°39.8′
13. The Graves Light (Boston)	42°21.9′	70°52.2′
14. Minots Ledge Light	42°16.2′	70°45.6′
15. Farnham Rock Lighted Bell Buoy	42°05.6′	70°36.5′
16. Cape Cod Canal Bell Buoy "CC"	41°48.9′	70°27.7′
17. A point inside Cape Cod Bay	41°48.9′	70°05′
18. Race Point Lighted Bell Buoy "RP"	42°04.9′	70°16.8′
19. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0′	70°06.2′
20. Connecting point, off Nauset Light	41°50′	69°53′
21. A point south of Chatham "C" Whistle Buoy	41°38′	69°55.2′
22. A point in eastern Vineyard Sound	41°30′	70°33′
23. A point east of Martha's Vineyard	41°22.2′	70°24.6′
24. A point east of Great Pt. Light, Nantucket	41°23.4′	69°57′
25. A point SE of Sankaty Head, Nantucket	41°13′	69°57′
26. A point west of Nantucket	41°15.6′	70°25.2′
27. Squibnocket Lighted Bell Buoy "1"	41°15.7′	70°46.3′
28. Wilbur Point (on Sconticut Neck)	41°35.2′	70°51.2′
29. Mishaum Point (on Smith Neck)	41°31.0′	70°57.2′
30. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7′	71°13.4′
31. Point Judith Lighted Whistle Buoy "2"	41°19.3′	71°28.6′
32. A point off Block Island Southeast Light	41°08.2′	71°32.1′
33. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0′	72°28.6′
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5′	73°55.0′
35. Barnegat Lighted Gong Buoy "2"	39°45.5′	73°59.5′
36. A point east of Atlantic City Light	39°21.9′	74°22.7′
37. A point east of Hereford Inlet Light	39°00.4′	74°46′

VMS DEMARCATION LINE—Continued

Description	N. Lat.	W. Long.
38. A point east of Cape Henlopen Light	38°47′	75°04′
39. A point east of Fenwick Island Light	38°27.1′	75°02′
40. A point NE of Assateague Island (VA)	38°00′	75°13′
41. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0′	75°33.7′
42. A point NE of Cape Henry	36°55.6′	75°58.5′
43. A point east of Currituck Beach Light	36°22.6′	75°48′
44. Oregon Inlet (NC) Whistle Buoy	35°48.5′	75°30′
45. Wimble Shoals, east of Chicamacomico	35°36′	75°26′
46. A point SE of Cape Hatteras Light	35°12.5′	75°30′
47. Hatteras Inlet Entrance Buoy "HI"	35°10′	75°46′
48. Ocracoke Inlet Whistle Buoy "OC"	35°01.5′	76°00.5′
49. A point east of Cape Lookout Light	34°36.5′	76°30′
50. Southern terminus point	34°35′	76°41′

(b) *VMS Notification.* (1) The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified pursuant to § 648.9(a):

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit or an LAGC scallop permit;

(ii) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.60;

(iii)–(iv) [Reserved]

(v) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section; and

(vi) A vessel issued a limited access NE multispecies permit that fishes under a NE multispecies Category A or B DAS.

(vii) A vessel issued a surfclam (SF 1) or an ocean quahog (OQ 6) open access permit;

(viii) Effective January 1, 2009, a vessel issued a Maine mahogany quahog (OQ 7) limited access permit, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(*1*);

(ix) A limited access monkfish vessel electing to fish in the Offshore Fishery Program in the SFMA, as provided in § 648.95.

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all affected permit holders providing detailed information on the procedures pertaining to VMS purchase, installation, and use.

(i) A vessel subject to the VMS requirements of § 648.9 and this paragraph (b) that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the

vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying NMFS by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) Notification that the vessel is not fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS, must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(3)(i) A vessel issued a limited access monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section.

(ii) [Reserved]

(iii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Vessels electing to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. A vessel that calls in is exempt from the prohibition specified in § 648.14(c)(2).

(4) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, or general category scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(i) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery (*i.e.*, the vessel will not possess, retain, or land scallops) for a specific time period by notifying the Regional Administrator through the VMS. An IFQ scallop vessel that is fishing north of 42°20′ N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(ii) *NGOM scallop fishery.* An NGOM scallop vessel is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of all fisheries as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(iii) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the demarcation line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of all fisheries as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(iv) *Catch reports.* All scallop vessels fishing in the Sea Scallop Area Access Program as described in § 648.60 are required to submit a daily report through VMS of scallops kept and yellowtail flounder caught (including discarded yellowtail flounder) on each Access

Area trip. The VMS catch reporting requirements are specified in § 648.60(a)(9). A vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of scallops kept on each trip declared as a scallop trip or on trips that are not declared through VMS as a scallop trip, but on which scallops are caught incidentally. VMS catch reports by IFQ and NGOM scallop vessels must be sent prior to crossing the VMS demarcation line on the way into port at the end of the trip and must include the amount of scallop meats to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the vessel trip report serial number recorded from that trip's vessel trip report.

(5) VMS notification requirements for other fisheries. Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (b)(2) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b)(1) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip. Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs. A vessel cannot change any aspect of its VMS activity code outside of port, except that NE multispecies vessels are authorized to change the category of DAS used (i.e., flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A). VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

(c) *Call-in notification*. The owner of a vessel issued a limited access monkfish or red crab permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (b) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.60, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (d) of this section, are subject to the following requirements:

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number; vessel name and permit number; type of trip to be taken; port of departure; and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (b)(2)(iii) of this section. Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(i), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(2) The vessel's confirmation numbers for the current and immediately prior NE multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(3) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify

him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, permit number, port of landing, and that the vessel has ended its trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(iii) of this section.

(4) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(b)(2)(iii), 648.17, and 648.89; any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1) shall be deemed to be in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (b) or (c) of this section.

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section, instead of the use of the VMS. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the FEDERAL REGISTER, e-mail, or other appropriate means.

(e) *Scallop vessels fishing under exemptions.* Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b)(1) must notify the Regional Administrator by VMS notification or by call-in notification as follows:

(1) *VMS notification.* (i) Notify the Regional Administrator, via their VMS, prior to the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(ii) Notify the Regional Administrator, via their VMS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(2) *Call-in notification.* (i) Notify the Regional Administrator by calling the Regional Administrator and providing the following information at least 7 days prior to fishing under the exemption: Owner and caller name and address, vessel name and permit number, and beginning and ending dates of the exemption period.

(ii) Remain under the exemption for a minimum of 7 days.

(iii) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of the exemption period, notify the Regional Administrator of early withdrawal from the program by calling the Regional Administrator, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Administrator.

(iv) The Regional Administrator will furnish a phone number for call-ins upon request.

(v) Such vessels must comply with the VMS notification requirements specified in paragraph (b) of this section by notifying the Regional Administrator by entering the appropriate VMS code that the vessel is fishing outside of the scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of a vessel issued a valid Small Vessel category permit or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of

their 20-day period out of the NE multispecies fishery through the IVR system (or through VMS, if required by the Regional Administrator) and provide the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in*. A vessel subject to the gillnet restriction described in § 648.82 must notify the Regional Administrator of the commencement of its time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTES: 1. For FEDERAL REGISTER citations affecting § 648.10, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

2. At 73 FR 73278, Dec. 27, 2007, § 648.10 was amended by revising paragraph (b)(2)(iii); however, the amendment could not be incorporated because (b)(2)(iii) does not exist. For the convenience of the user, the revised text is set forth as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(2) * * *

(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

* * * * *

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

(b) If requested by the Regional Administrator to carry an observer or sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate observer or sea sampler placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Director, as specified by the Regional Administrator, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners.

(c) The Regional Administrator may waive the requirement to carry a sea sampler or observer if the facilities on a vessel for housing the observer or sea sampler, or for carrying out observer or sea sampler functions, are so inadequate or unsafe that the health or safety of the observer or sea sampler, or the safe operation of the vessel, would be jeopardized.

(d) An owner or operator of a vessel on which a NMFS-approved sea sampler/observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the sea sampler's/observer's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Administrator, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/ observers involved.

(6) Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

(f) NMFS may accept observer coverage funded by outside sources if:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer is approved by the Regional Administrator.

(g) *Atlantic sea scallop observer program*—(1) *General*. Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (b) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in § 648.60 are required to comply with the additional VMS notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has

been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) *Vessel notification procedures—(i) Limited access vessels.* Limited access vessel owners, operators, or managers shall notify NMFS/NEFOP by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(ii) *General category vessels.* General category vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start a scallop trip in an access area. If selected, up to two Sea Scallop Access Area trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

(3) *Selection of scallop trips for observer coverage.* Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified scallop trip, within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective scallop trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date; and

(4) *Procurement of observer services by scallop vessels.* (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at *http://www.nefsc.noaa.gov/femad/fsb/*. The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/NEFOP shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas in order to help defray the cost

of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS scallop trip consistent with paragraphs (g)(5)(i)(A) and (B), respectively, of this section.

(A) *Access Area trips*. For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area, a service provider shall charge a vessel owner from when an observer boards a vessel until they disembark (dock to dock), where ''day'' is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, which would equate to 2 ''days.''

(B) *Open area scallop trips*. For purposes of determining the daily rate for an observed scallop trip for open area DAS trips, a service provider shall charge dock to dock where ''day'' is defined as a 24-hour period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, so the provider would charge 1 day and 3 hours.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in a Sea Scallop Access Area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. Vessel owners and observer providers shall be notified by NMFS of any adjustments.

(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities*—(1) *General*. An entity seeking to provide observer services must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to vessel owners and shall be posted on the NMFS/NEFOP website at *http://www.nefsc.noaa.gov/femad/fsb/*.

(2) *Existing observer service providers*. Observer service providers that currently deploy certified observers in the Northeast must submit an application containing the information specified in paragraph (h)(3) of this section, excluding any information specified in paragraph (h)(3) of this section that has already been submitted to NMFS.

(3) *Contents of application*. An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or

owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a fishery observer services provider as set out under paragraph (h)(2) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the U.S. Department of Labor (DOL) guidelines for observers. Observers shall be compensated as a Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified, observers on staff or a list of its training candidates (with resumes) and a request for an appropriate NMFS/NEFOP Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with less than eight individuals will be delayed until further requests make up the full training class size. Requests for training classes must be made 30 days in advance of the requested date and must have a complete roster of trainees at that time.

(x) An Emergency Action Plan (EAP) describing its response to an ''at sea'' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation*. (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination of the applicant's ability to perform the duties and responsibilities of a fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 business days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit

an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) *Responsibilities of observer service providers.* (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 48 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a fishing vessel or to attend an appropriate NMFS/NEFOP Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the appropriate fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP

Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

(vii) *Reports*—(A) *Observer deployment reports*. The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 24 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr, which should be within 4 business days of the trip landing.

(B) *Safety refusals*. The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.

(C) *Biological samples*. The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing*. The observer service provider must ensure that the observer remains available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. If requested by NMFS, an observer that is at sea during the 2-week period must contact NMFS upon his or her return.

(E) *Observer availability report*. The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports*. The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, observer illness or injury, and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior must be submitted to NMFS within 24 hours of the event or within 24 hours of learning of the event.

(G) *Observer status report*. Providers must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, e-mail address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is ''in service,'' indicating when the observer has requested leave and/or is not currently working for the industry funded program.

(H) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(viii) *Refusal to deploy an observer*. (A) An observer service provider may refuse to deploy an observer on a requesting fishing vessel if the observer service provider does not have an available observer within 72 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting fishing vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The observer service provider may refuse to deploy an observer on a fishing vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence that clearly disproves the reasons for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(3) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification*. (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website: *http://www.st.nmfs.gov/st4/nop/*.

(2) *Observer training*. In order to be deployed on any fishing vessel, a candidate observer must have passed an appropriate NMFS/NEFOP Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements*. All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP website specified in paragraph (h)(1) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalence) CPR/first aid certification.

(4) *Probation and decertification*. NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section.

(5) *Issuance of decertification*. Upon determination that decertification is warranted under paragraph (i)(3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 65 FR 1569, Jan. 11, 2000; 65 FR 45852, July 26, 2000; 65 FR 77466, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49700, Aug. 19, 2003; 71 FR 33225, June 8, 2006; 72 FR 20038, Apr. 23, 2007; 72 FR 32555, June 13, 2007; 72 FR 68096, Dec. 4, 2007; 73 FR 4750, Jan. 28, 2008; 73 FR 30802, May 29, 2008]

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

(a) The Regional Administrator may not grant such an exemption unless he/

she determines that the purpose, design, and administration of the exemption is consistent with the management objectives of the respective FMP, the provisions of the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the respective resources and fishery;

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surf clams or ocean quahogs will not require an allocation permit.

[61 FR 58466, Nov. 15, 1996, as amended at 62 FR 37156, July 11, 1997; 65 FR 45852, July 26, 2000; 65 FR 77466, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49700, Aug. 19, 2003]

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterfish moratorium or *Illex* moratorium permit under § 648.4(a)(5) and vessels issued a mackerel or squid/butterfish incidental catch permit and authorized in writing by the Regional Administrator to do so, may transfer or attempt to transfer *Loligo*, *Illex*, or butterfish from one vessel to another vessel.

(b)(1) Except as provided in paragraph (b)(2) of this section, vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a Federal multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer from one vessel to another, for use as bait, up to 500 lb (226.8 kg) of silver hake and unlimited amounts of red hake, per trip, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

(ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and

(iii) The receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.

(c) All persons are prohibited from transferring or attempting to transfer NE multispecies or scallops from one vessel to another vessel, except in accordance with paragraph (b) of this section.

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel.

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(f) *Atlantic herring*. With the exception of transfers made to an at-sea processing vessel issued the required permit under § 648.6(a)(2)(ii), any person or vessel, including any vessel issued an Atlantic herring permit, is prohibited from transferring, receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, except as authorized in this paragraph (f), and in compliance with reporting requirements at § 648.7 (b)(2)(i)(D).

(1) *Personal use as bait*. (i) The operator of a vessel that is not issued an Atlantic herring permit may purchase and/or receive Atlantic herring at sea

for personal use as bait, provided the vessel receiving the transfer does not have purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board;

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to another vessel for personal use as bait:

(A) Provided the transferring vessel is issued a letter of authorization to transfer fish. The operator of the transferring vessel must show the letter of authorization to a representative of the vessel receiving fish or any authorized officer upon request; and

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to fishing as specified in § 648.201.

(2) *Atlantic herring carrier vessels.* (i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii).

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an Atlantic herring carrier up to the applicable possession limits specified in § 648.204, provided it is issued a letter of authorization for the transfer of herring and that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, an area closed to directed fishing as specified in § 648.201.

(3) If a herring management area has been closed to fishing as specified in § 648.201, a vessel may not transfer Atlantic herring harvested from or in the area to an IWP or Joint Venture vessel.

(4) If the amount of herring transshipped to a Canadian transshipment vessel would cause the amount of the border transfer specified pursuant to § 648.200 to be exceeded, a vessel may not transfer Atlantic herring to a Canadian transshipment vessel permitted in accordance with Public Law 104–297.

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2)(ii), up to the applicable possession limit specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

(6) *Transfers between herring vessels.* A vessel issued a valid Atlantic herring permit may transfer and receive herring at sea, provided such vessel has been issued a letter of authorization from the Regional Administrator to transfer or receive herring at sea. Such vessel may not transfer, receive, or possess at sea, or land per trip herring in excess of the applicable possession limits specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught, transferred, received, or possessed at sea, or landed per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

(g) All persons are prohibited from transferring at sea, either directly or indirectly, or attempting to transfer at sea to any vessel, any red crab or red crab parts, taken in or from the EEZ portion of the Red Crab Management Unit.

(h) *Skates.* (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit provided:

(i) The transferring vessel possesses on board a letter of authorization issued by the Regional Administrator as specified under § 648.322(b);

(ii) The vessel and vessel owner or operator comply with the requirements specified at § 648.322(b);

(iii) The transferring vessel maintains a record of the quantity of skates transferred according to the requirements at § 648.7; and

(iv) The transferring vessel provides the receiving vessel documentation showing the date and the amount of skates transferred, whether or not a monetary exchange is involved in the transfer, and the transferring vessel maintains onboard, for a minimum of 1 year from the date of the transfer, a copy of said documentation.

(i) *Scup.* (1) Except as provided in paragraph (i)(2) of this section, all persons or vessels issued a Federal scup permit are prohibited from transferring, or attempting to transfer, at sea any scup to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any scup while in the EEZ, or any scup taken in or from the EEZ portion of the Scup Management Unit.

(2) The owner or operator of a vessel issued a Federal scup permit under § 648.4(a)(6)(i)(A) may transfer at sea scup taken in or from the EEZ portion of the Scup Management Unit, provided:

(i) The transfer occurs between two vessels with Federal scup permits;

(ii) The transfer occurs seaward of a boundary line that begins at 40°50′ N. lat., 70°00′ W. long., and runs south to connect points at 40°15′ N. lat., 73°30′ W. long.; 37°50′ N. lat., 75°00′ W. long.; and 35°30′ N. lat., 75°00′ W. long.;

(iii) The donating and receiving vessels possess gear that meets the requirements at § 648.123(a)(2), (3), and (4) for commercial scup fishing gear;

(iv) The transfer occurs in the Winter I or Winter II periods of the scup fishing year;

(v) There is only one transfer per fishing trip for the donor vessel;

(vi) The donor vessel removes only enough scup from the net to attain the scup possession limit;

(vii) After removal of scup from the net by the donor vessel, the entire codend, with all its contents, is transferred to the receiving vessel;

(viii) Only scup in an amount not to exceed the possession limit are retained by the receiving vessel;

(ix) While fishing for scup, all other nets are stored in accordance with § 648.23(b)(1); and

(x) The donating and receiving vessels report the transfer amount on the vessel trip report for each vessel.

[61 FR 34968, July 3, 1996, as amended at 62 FR 28642, May 27, 1997; 62 FR 63875, Dec. 3, 1997; 65 FR 16774, Mar. 29, 2000; 65 FR 77466, Dec. 11, 2000; 67 FR 63232, Oct. 10, 2002; 68 FR 22336, Apr. 28, 2003; 68 FR 49700, Aug. 19, 2003; 69 FR 16178, Mar. 29, 2004; 72 FR 11274, Mar. 12, 2007]

§ 648.14 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fail to report to the Regional Administrator within 15 days any change in the information contained in an applicable vessel, operator, or dealer/processor permit application.

(2) Falsify or fail to affix and maintain vessel markings as required by § 648.8.

(3) Make any false statement in connection with an application, declaration, or report under this part.

(4) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 648.7, or submit or maintain false information in records and reports required to be kept or filed under § 648.7.

(5) Alter, erase, or mutilate any permit issued under this part.

(6) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(7) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, VMS unit, or VMS signal required to be installed on or transmitted by vessel owners or operators required to use a VMS by this part.

(8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or

bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g).

(9) Refuse to carry an observer or sea sampler if requested to do so by the Regional Administrator.

(10) To refuse reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel.

(11) Fish for surf clams or ocean quahogs in any area closed to surf clam or ocean quahog fishing.

(12) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(13) Purchase, possess or receive for a commercial purpose, or attempt to purchase possess or receive for a commercial purpose, any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part that fished exclusively in state waters, or unless otherwise specified in § 648.17.

(14) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Administrator.

(15) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(16) Tag a cage of surf clams with an ocean quahog cage tag or tag a cage of ocean quahogs with a surf clam cage tag.

(17) Possess, import, export, transfer, land, have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations.

(18) Possess an empty cage to which a cage tag required by § 648.75 is affixed or possess any cage that does not contain surf clams or ocean quahogs and to which a cage tag required by § 648.75 is affixed.

(19) Land or possess, after offloading, any cage holding surf clams or ocean quahogs without a cage tag or tags required by § 648.75, unless the person can demonstrate the inapplicability of the presumptions set forth in § 648.75(h).

(20) Sell null and void tags.

(21) Shuck surf clams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Administrator under the terms of § 648.74.

(22) Receive for a commercial purpose other than transport, surf clams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.70, unless issued a dealer/processor permit under this part.

(23) Land unshucked surf clams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages.

(24) Land unshucked surf clams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(25) Fail to maintain an operational VMS unit as specified in § 648.9, and comply with any of the notification requirements specified in § 648.15(b) including:

(i) Fish for, land, take, possess, or transfer surfclams or ocean quahogs under an open access surfclam or ocean quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel

and declared a surfclam, ocean quahog, or Maine mahogany quahog fishing activity code via the VMS unit prior to leaving port as specified at § 648.15(b);

(ii) Beginning January 1, 2009, fish for, land, take, possess, or transfer ocean quahogs under a limited access Maine mahogany quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel and declared a fishing trip via the VMS unit as specified at § 648.15(b).

(26) Fish for, retain, or land both surf clams and ocean quahogs in or from the EEZ on the same trip.

(27) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surf clam fishing trip under § 648.15(b), or fish for, retain, or land surf clams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(28) Fail to offload any surf clams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(29) Land or possess any surf clams or ocean quahogs harvested in or from the EEZ in excess of, or without, an individual allocation.

(30) Transfer any surf clams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than transport, without a surf clam or ocean quahog processor or dealer permit.

(31) Fish for, possess, or land NE multispecies, unless:

(i) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has been issued an operator's permit and has a valid permit on board the vessel;

(ii) The NE multispecies were harvested by a vessel not issued a NE multispecies permit, nor eligible to renew or be reissued a limited access NE multispecies permit as specified in § 648.4 (b)(2), that fishes for NE multispecies exclusively in state waters;

(iii) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel; or

(iv) Unless otherwise specified in § 648.17.

(32) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies from one vessel to another vessel, unless both vessels have not been issued multispecies permits and both fish exclusively in state waters, or unless authorized in writing by the Regional Administrator.

(33) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any NE multispecies from a trip, unless the vessel is holding a multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89, or unless the NE multispecies were harvested by a vessel without a multispecies permit that fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(34) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a multispecies permit without having been issued and possessing a valid operator's permit.

(35) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4), except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (b)(9), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(37) Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller that the minimum mesh size specified in § 648.80(c)(2), except as provided in § 648.80(c)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (i).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (i).

(41) Fail to comply with the gear-marking requirements of § 648.84.

(42) Fish within the areas described in § 648.80(a)(6) with nets of mesh smaller than the minimum size specified in § 648.80(a)(3) or (4).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16) the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5); the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

(44) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(45) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5).

(46) Violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter on board the vessel during the period of the experiment.

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(3) or (4), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(48) Violate any provision of the open access permit restrictions as provided in § 648.88.

(49) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(h) and 648.94.

(50) Violate any provision of the state waters winter flounder exemption program as provided in § 648.80(i).

(51) Obstruct or constrict a net as described in § 648.80(g) (1) or (2).

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(d)(1) through (g)(1), except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform

with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(54) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54 of this chapter, or fishing under a general scallop permit, unless said fish are caught, possessed or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limits specified in § 648.85 or § 648.86 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species are purchased or received from a member of an approved Sector as specified at § 648.87 that is exempt from such possession limits in accordance with an approved Sector Operations Plan.

(56) Fish for, possess, or land, scallops without the vessel having been issued and carrying onboard a valid scallop permit in accordance with § 648.4(a)(2), unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters;

(57) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport:

(i) In excess of 40 lb (18.1 kg) shucked scallops at any time, 5 bu (1.76 hl) in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(A) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters;

(B) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A) and is properly declared into the IFQ scallop fishery;

(C) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit issued pursuant to § 648.4(a)(2)(ii)(B), and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has not been harvested; or

(D) The scallops were harvested by a vessel that has been issued and carries on board an Incidental scallop permit allowing up to 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops, is carrying an at-sea observer, and is authorized by the Regional Administrator to have an increased possession limit to compensate for the cost of carrying the observer.

(ii) In excess of 200 lb (90.7 kg) shucked scallops at any time, 25 bu (8.8 hl) in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(A) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters;

(B) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program;

(C) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery;

(D) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54; or

(E) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit allowing up to 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops, is carrying an at-sea observer, and is authorized by the Regional Administrator to have an increased possession limit to compensate for the cost of carrying the observer.

(iii) In excess of 400 lb (181.4 kg) shucked scallops at any time, 50 bu (17.6 hl) in-shell scallops shoreward of the VMS Demarcation Line, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless:

(A) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(B) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit issued pursuant to § 648.4(a)(2)(i) and is properly declared into the scallop DAS or Area Access program;

(C) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54; or

(D) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit, is carrying an at-sea observer, and is authorized by the Regional Administrator to have an increased possession limit to compensate for the cost of carrying the observer.

(58) [Reserved]

(59) Have a shucking or sorting machine on board a vessel that shucks scallops at sea, while in possession of more than 400 lb (181.44 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(60) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer, scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, scallops, unless the vessel has been issued a valid scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(62) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, scallops taken from a fishing vessel that were harvested in or from the EEZ, unless issued, and in possession of, a valid scallop dealer's permit.

(63) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, scallops caught by a vessel other than one issued a valid limited access or general scallop permit unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(64) Operate or act as an operator of a vessel fishing for or possessing any species of fish regulated by this part in or from the EEZ, or issued a permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(65) Possess in or harvest from the EEZ summer flounder, either in excess of the possession limit specified in § 648.105, or before or after the time period specified in § 648.102, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(66) Possess nets or netting with mesh not meeting the minimum mesh requirement of § 648.104 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 648.105(a).

(67) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium permit, unless in possession of a valid summer flounder dealer permit.

(68) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a summer flounder moratorium permit not subject to the possession limit of § 648.105.

(69) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state.

(70) Fail to comply with any sea turtle conservation measure specified in

§ 648.106, including any sea turtle conservation measure implemented by notification in the FEDERAL REGISTER in accordance with § 648.106(d).

(71) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from or in the EEZ.

(72) Transfer, directly or indirectly, or attempt to transfer to any vessel any Atlantic salmon taken in or from the EEZ.

(73) Take, retain, possess, or land more mackerel, squid, or butterfish than as specified at § 648.25.

(74) Possess nets or netting with mesh not meeting the minimum size requirements of § 648.23, and not stowed in accordance with the requirements of § 648.23, if in possession of Loligo or butterfish harvested in or from the EEZ.

(75) Transfer *Loligo*, *Illex*, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessels are permitted or have a valid squid/butterfish incidental catch permit and a letter of authorization from the Regional Administrator.

(76) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, mackerel, squid, and butterfish taken from a fishing vessel unless issued, and in possession of a valid mackerel, squid, and butterfish fishery dealer permit.

(77) Purchase or otherwise receive for a commercial purpose, mackerel, squid, and butterfish caught by other than a vessel issued a mackerel, squid, and butterfish permit, unless the vessel has not been issued a permit under this part and fishes exclusively within the waters under the jurisdiction of any state.

(78) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

(79) Violate any other provision of this part, the Magnuson Act, or any regulation, notice, or permit issued under the Magnuson Act.

(80) Possess scup in or harvested from the EEZ north of 35°15.3′ N. lat. in an area closed, or before or after a season established pursuant to § 648.122, or in excess of the possession limit established pursuant to § 648.125.

(81) To purchase or otherwise receive for a commercial purpose scup harvested from the EEZ north of 35°15.3′ N. lat., or from a vessel issued a scup moratorium permit after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(82) Land scup harvested in or from the EEZ north of 35°15.3′ N. lat. after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(83) Possess scup harvested in or from the EEZ north of 35°15.3′ N. lat. that do not meet the minimum fish size specified in § 648.124.

(84) Fish for, catch, possess, or retain scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the amount specified in § 648.123 (500 lb (226.8 kg) or more from November 1– April 30, or 100 lb (45.4 kg) or more from May 1–October 31), unless the vessel meets the gear restrictions in § 648.123.

(85) Fish for, catch, or retain scup in or from the EEZ north of 35°15.3′ N. lat. for sale, barter, or trade, after January 1, 1997, unless the vessel has been issued a valid moratorium permit pursuant to § 648.4(a)(6).

(86) Sell or transfer scup harvested in or from the EEZ north of 35°15.3′ N. lat. after January 1, 1997, unless the vessel has been issued a valid moratorium permit pursuant to § 648.4(a)(6).

(87) Fish for, catch, or retain scup in or from the EEZ north of 35°15.3′ N. lat. on board a party or charter boat after January 1, 1997, unless the vessel has been issued a valid party or charter boat permit pursuant to § 648.4(a)(6)(ii).

(88) Fish with or possess scup pots or traps in the EEZ north of 35°15.3′ N. lat. that have a rectangular escape vent, any side of which is less than 2.25 inches (5.7 cm) in length.

(89) Fish for, catch, and retain, or land scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the landing

limit established pursuant to § 648.120(b)(3) and (b)(4).

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and (ii) and 648.81(f)(2)(ii), or unless otherwise authorized in writing by the Regional Administrator.

(91) Possess in or harvest from the EEZ from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, black sea bass either in excess of the possession limit established pursuant to § 648.145 or before or after the time period established pursuant to § 648.142, unless the person is operating a vessel issued a moratorium permit under § 648.4 and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended;

(92) Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3 N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in § 648.144(a)(1)(i) (i.e., 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the gear restrictions of § 648.144(a).

(93) Purchase or otherwise receive for commercial purposes black sea bass caught in the EEZ from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border, by other than a vessel with a moratorium permit not subject to the possession limit established pursuant to § 648.145 unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

(94) Possess or use rollers used in roller rig or rock hopper trawl gear that do not meet the minimum size requirement of § 648.144 if the person possesses black sea bass harvested in or from the EEZ from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

(95) Possess or use pot and trap gear not meeting the requirements of § 648.144 if the person possesses black sea bass harvested in or from the EEZ from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

(96) Purchase or otherwise receive for commercial purposes black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3′ N. lat., after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(97) Fail to comply with any of the provisions specified in § 648.56.

(98) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), (l)(1), and (m)(1) on a fishing vessel with mobile gear during the time periods specified in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2), except as provided in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2).

(99) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), and (l)(1) on a fishing vessel with lobster pot gear during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

(100) Deploy in or fail to remove lobster pot gear from the areas described in § 648.81(j)(1), (k)(1), and (l)(1), during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

(101) Enter, fail to remove gear from, or be in the areas described in § 648.81(g)(1) through (i)(1) during the time period specified, except as provided in § 648.81(d), (g)(2), (h)(2), and (i)(2).

(102) Enter or fish in the Gulf of Maine, Georges Bank, and Southern New England Regulated Mesh Areas, except as provided in §§ 648.80(a)(3)(vi) and (b)(2)(vi), and for purposes of transiting, provided that all gear (other than exempted gear) is stowed in accordance with § 648.23(b).

(103) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or transfer, other than solely for transport, any Atlantic herring, multispecies, or monkfish, unless the dealer or transferee has a valid dealer permit

issued under § 648.6. A person who purchases and/or receives Atlantic herring at sea for his own personal use as bait, and does not have purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, is exempt from the requirement to possess an Atlantic herring dealer permit.

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), or as authorized under § 648.85.

(105) Offload unshucked surf clams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(106) Offload unshucked surf clams harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(107) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(108) Purchase, receive for a commercial purpose other than transport to a testing facility, or process, or attempt to purchase, receive for commercial purpose other than transport to a testing facility, or process, outside Maine, ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(109) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the FEDERAL REGISTER notifying participants that Maine mahogany quahog quota is no longer available, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.70.

(110) Fish for sea scallops in, or possess or land sea scallops from, the areas specified in §§ 648.58 and 648.61.

(111) Transit or be in the areas described in §§ 648.58 and 648.61 in possession of scallops, except when all fishing gear is unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason to be in such areas.

(112) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(9)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5)(ii) or (a)(9)(ii).

(113) Land ocean quahogs outside Maine that are harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(114) Fish for, possess, or land species regulated under this part with or from a vessel that is issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), and that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(115) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of

any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

(117) Fish for, land, or possess NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(118) Possess brush-sweep trawl gear while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(119) Purchase or otherwise receive, except for transport, spiny dogfish from any person on board a vessel issued a spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(120) Purchase or otherwise receive for a commercial purpose spiny dogfish landed by a federally permitted vessel in any state, from Maine to Florida, after the effective date of notification published in the FEDERAL REGISTER stating that the semi-annual quota has been harvested and the EEZ is closed to the harvest of spiny dogfish.

(121) Enter, be on a fishing vessel in, or fail to remove gear from, the EEZ portion of the areas described in § 648.81(n) during the time periods specified, except as provided in § 648.81(d) and (n)(2).

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in §§ 648.122 and 648.123(a), unless the nets or netting are stowed in accordance with § 648.123(b).

(123) Fish for, land, or possess NE multispecies harvested with the use of de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(124) Possess or use de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(125) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish permit (Category C, D, F, G, or H), but are not fishing under the limited access monkfish Category A or B provisions as allowed under § 648.92(b)(2), call into the DAS program prior to 1 hour before leaving port.

(126) Call in DAS in excess of that allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

(127) [Reserved]

(128) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(3).

(129) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the applicable restrictions specified under § 648.85(a)(3)(ii)(A) or (B).

(131) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii), unless otherwise allowed under the Eastern U.S./Canada Haddock SAP rules in § 648.85(b)(8)(v)(E).

(133) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b).

(134) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Area specified in

§ 648.85(a)(1), if the area is closed under the authority of the Regional Administrator as described in § 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8).

(135) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in §§ 648.85(b)(3)(i) through (xi).

(137) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v).

(138) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder SAP outside of the season specified in § 648.85(b)(3)(iii).

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vi) or (vii).

(140) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(141) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(142) If the vessel has been issued a limited access NE multispecies DAS permit and is in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(143) If fishing under a NE multispecies DAS, fish in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), unless declared into the program in accordance with § 648.85(b)(8)(v)(D).

(144) Enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program outside of the season specified in § 648.85(b)(8)(iv).

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP, exceed the possession limits specified in § 648.85(b)(8)(v)(F).

(146) If fishing under the Eastern U.S./Canada Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (I).

(147) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(*2*) through (*4*).

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

(149) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(150) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8), fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(8)(v)(I) or the minimum Category A DAS requirement specified in § 648.85(b)(8)(v)(J).

(151) If fishing in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the reporting requirements specified in § 648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the observer notification requirements specified in § 648.85(b)(8)(v)(C).

(153) If fishing under the SNE/MA Winter Flounder SAP described in § 648.85(b)(4), fail to comply with the restrictions and conditions under § 648.85(b)(4)(i) through (iv).

(154) If fishing under an approved Sector, as authorized under § 648.87, fail to abide by the restrictions specified in § 648.87(b)(1).

(155) If fishing under an approved Sector, as authorized under § 648.87, fail to remain in the sector for the remainder of the fishing year as required under § 648.87(b)(1).

(156) If fishing under an approved Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year or, if fishing under a NE multispecies DAS, fish in an approved Sector in a given fishing year, unless otherwise provided under § 648.87(b)(1)(xii).

(157) If a vessel has agreed to participate in a Sector, fail to remain in the Sector for the entire fishing year, as required under § 648.87(b)(1)(xi).

(158) If a vessel is removed from a Sector for violation of the Sector rules, fish under the NE Multispecies regulations for non-Sector vessels.

(159) If fishing under the GB Cod Hook Sector, fish with gear other than jigs, demersal longline, or handgear.

(160) Land or possess on board a vessel, more than the possession or landing limits specified in § 648.88(a)(1), if fishing under an open access Handgear permit.

(161) Possess on board gear other than that specified under § 648.88(a)(2)(i), or fish with hooks greater than the number specified under § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(162) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(163) Sell or transfer to another person for a commercial purpose, other than solely for transport, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(164) Sell or transfer to another person for a commercial purpose, other than solely for transport, any Atlantic sea scallops harvested from the EEZ by a vessel issued a Federal Atlantic sea scallop permit, unless the transferee has a valid Atlantic sea scallop dealer permit.

(165) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Pilot Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

(166) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies, or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) for, or intended for, human consumption landed by a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit as defined in § 648.2.

(167) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit limited access herring vessel, as defined in § 648.2, and to retain such catch for at least 12 hr, with the vessel that landed the haddock clearly identified by name.

(168) Sell, purchase, receive, trade, barter, or transfer, or attempt to sell, purchase, receive, trade, barter, or transfer to another person any haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) separated out from a herring catch offloaded from a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit as defined in § 648.2.

(169) While operating an at-sea herring processor, fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, as defined in § 648.2, and to retain such catch for at least 12 hr after landing, with the vessel that offloaded the haddock clearly identified by name.

(170) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the are of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(i) 43° 00′ N. lat., 71° 00′ W. long.;

(ii) 43° 00′ N. lat., 69° 00′ W. long.;

(iii) 41° 39′ N. lat., 69° 00′ W. long;

(iv) 41° 39′ N. lat., 71° 00′W. long.; and then ending at the first point.

(171) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops except for sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(i) 41° 39′N. lat., 71° 00′ W. long.;

(ii) 41° 39′ N. lat., 69° 00′ W. long.;

(iii) 40° 00′ N. lat., 6° 00′ W. long.;

(iv) 40° 00′ N. lat., 71° 00′ W. long.; and then ending at the first point.

(172) If, upon the end of a fishing trip as specified under § 648.10(b)(2)(iii) or (c)(3), fail to offload regulated species subject to a landing limit based on a DAS fished under § 648.85 or § 648.86, as required by § 648.86(i).

(173) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(ii)(A)(*1*).

(174) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive DAS counting, trip limits, and reporting requirements that apply, as described in § 648.85(a)(3)(ii)(A) and the other applicable area fished.

(175) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish outside of the Eastern U.S./Canada Area on the same trip, as prohibited under § 648.85(a)(3)(ii)(A).

(176) If fishing under the GB Fixed Gear Sector specified under § 648.87(d)(2), fish with gear other than jigs, non-automated demersal longline, handgear, or sink gillnets.

(177) Fail to comply with the reporting requirements under § 648.85(a)(3)(ii)(A)(*2*) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

(178) If eligible for re-issuance or renewal of a limited access or moratorium permit:

(i) Fish for, take, catch, harvest or land any species of fish regulated by this part for which the vessel is eligible to possess under a limited access or moratorium permit until the vessel has been reissued the applicable limited access or moratorium permit by NMFS.

(ii) [Reserved]

(179) Attempt to replace a limited access or moratorium fishing vessel, as specified at § 648.4(a)(1)(i)(E), more than one time during a permit year, unless the vessel has been rendered inoperable and non-repairable.

(180) Fail to comply with the requirements and restrictions for general category scallop sectors specified in § 648.63.

(181) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(i) 43°00′N. lat., 71°00′W. long.;

(ii) 43°00′N. lat., 69°00′W. long.;

(iii) 41°00′N. lat., 69°00′W. long.;

(iv) 41°00′N. lat., 70°30′W. long.;

(v) 41°39′N. lat., 70°30′W. long.;

(vi) 41°39′N. lat., 71°00′W. long.; and then ending at the first point.

(182) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops, except for sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(i) 41°39′N. lat., 71°00′W. long.;

(ii) 41°39′N. lat., 70°30′W. long.;

(iii) 41°00′N. lat., 70°30′W. long.;

(iv) 41°00′N. lat., 69°00′W. long.;

(v) 40°00′N. lat., 69°00′W. long.;

(vi) 40°00′N. lat., 71°00′W. long.; and then ending at the first point.

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid multispecies permit, or any person issued an operator's permit or issued a letter under § 648.4(a)(1)(i)(M)(*3*), to do any of the following:

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86 (a), (b), (c), (d), (g), and (h), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(2) [Reserved]

(3) While fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1).

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any owner or operator of a vessel issued a valid limited access NE multispecies permit or letter under § 648.4(a)(1)(I), unless otherwise specified in § 648.17, to do any of the following:

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(5) or § 648.89.

(2) For purposes of DAS notification, if required or electing to have a VMS unit under § 648.10:

(i) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage as specified in § 648.10(b).

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

(4) Fish for, possess, or land NE multispecies with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i) (E) and (F).

(5) Fish for, possess, or land NE multispecies with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i) (E) and (F).

(6) Fail to comply with any provision of the DAS notification program as specified in § 648.10.

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (e), (g), (h), and (j), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a

limited access NE multispecies permit and fishes with hook-gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(F).

(9) Fail to declare, and be, out of the NE multispecies DAS program as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(i).

(11) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(j).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in § 648.82(j)(1).

(13) If the vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

(14) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS with gillnet gear, fail to comply with gillnet tagging requirements specified in §§ 648.80(a)(3)(iv)(B)(*4*), (a)(3)(iv)(C), (a)(4)(iv)(B)(*3*), (b)(2)(iv)(B)(*3*), and (c)(2)(v)(B)(*3*), or fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C), without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

(16) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel.

(17) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(18) [Reserved]

(19) Fail to comply with the exemption specifications as described in § 648.86(b)(4).

(20) [Reserved]

(21) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(j)(1)(ii), using the procedure specified in § 648.82(h).

(22) Fail to comply with the exemption specifications as described in § 648.17.

(23) Fail to declare through VMS its intent to be exempt from the GOM cod trip limit under § 648.86(b)(1), as required under § 648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(1).

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

(25) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(1)(ii)(B).

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

(27) Possess or land per trip more than the possession or landing limit specified under § 648.86(c).

(28) Participate in the DAS program pursuant to § 648.82 when carrying passengers for hire on board the vessel during any portion of a fishing trip.

(29) Enter, be on a fishing vessel in, or fail to remove gear from the areas described in § 648.81(d)(1), (e)(1), (f)(1), and (g)(1) during the time periods specified, except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

(30) If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the Essential Fish Habitat (EFH) Closure Areas described in § 648.81(h)(1)(i) through (vi).

(31) If the vessel has been issued a Charter/party permit or is fishing

under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified in those sections.

(32) [Reserved]

(33) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(2)(ii)(B).

(34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(35) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(k)(3).

(36) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(37) Act as lessor or lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(k)(4)(ix).

(38) Sub-lease NE multispecies DAS.

(39) Lease more than the maximum number of DAS allowable under § 648.82(k)(4)(iv).

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

(43) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii).

(44) Transfer NE multispecies DAS or use transferred DAS that have not been approved for transfer by the Regional Administrator as specified under § 648.82(l).

(45) Provide false information on the application for NE multispecies DAS Transfer, as required under § 648.82(l)(2).

(46) Permanently transfer only a portion of a vessels total allocation of DAS.

(47) Permanently transfer NE multispecies DAS between vessels, if such vessels are not in accordance with the size restrictions specified in § 648.82(l)(1)(ii).

(48) [Reserved]

(49) Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a Special Access Program, as described in §§ 648.85(b)(3)(xi), 648.85(b)(7)(iv)(H) or 648.85(b)(8)(v)(I).

(50) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(6)(iv)(E).

(51) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

(52) If fishing in the Regular B DAS Program, fail to comply with the restriction on DAS use specified in § 648.82(d)(2)(i)(A).

(53) If fishing in the Eastern U.S./Canada Haddock SAP Area, and other portions of the Eastern U.S./Canada Haddock SAP Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(54) [Reserved]

(55) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the applicable landing limit specified in § 648.85(b)(8)(v)(F) or under § 648.86.

(56) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(v)(J).

(57) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the requirements and restrictions specified in § 648.85(b)(6)(iv)(A) through (F), (I), and (J).

(58) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(59) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(60) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(61) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(62) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(6)(iv)(E).

(63) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(64) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

(65) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), use a Regular B DAS after the program has closed, as required under § 648.85(b)(6)(iv)(G) or (H).

(66) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(67) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.

(68) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.

(69) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), outside of the season specified in § 648.85(b)(7)(iii).

(70) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(A), and (b)(7)(v)(A) or (b)(7)(vi)(A), whichever is applicable.

(71) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(72) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(73) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(D).

(74) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the gear restrictions specified in § 648.85(b)(7)(iv)(E), and (b)(7)(v)(B) or (b)(7)(vi)(B), whichever is applicable.

(75) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the landing limits specified in § 648.85(b)(7)(iv)(H), and (b)(7)(v)(C) or (b)(7)(vi)(C), whichever is applicable.

(76) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(v)(D) or (b)(7)(vi)(D), whichever is applicable.

(77) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(I) or (b)(7)(vi)(F).

(78) Fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), if the SAP is closed as specified in § 648.85(b)(8)(v)(K) or (L).

(79) [Reserved]

(80) Provide false information on the application to downgrade the DAS Leasing Program baseline, as required under § 648.82(k)(4)(xi).

(81) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A), or other approved gear as described under § 648.85(b)(6)(iv)(J).

(82) If fishing under a NE multispecies Category A DAS in either the GOM Differential DAS Area, or the SNE Differential DAS Area defined under § 648.82(e)(2)(i), fail to declare into the area through VMS as required under § 648.82(e)(2)(ii).

(83) If fishing under a NE multispecies Category A DAS in one of the Differential DAS Areas defined in § 648.82(e)(2)(i), and under the restrictions of one or more of the Special Management Programs under § 648.85, fail to comply with the most restrictive regulations.

(84) Fail to comply with the GB yellowtail flounder trip limit specified under § 648.85(a)(3)(iv)(C).

(85) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required under § 648.85(a)(3)(ii)(A).

(86) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to notify NMFS via VMS that it is electing to fish in this manner, as required by § 648.85(a)(3)(ii)(A)(*1*).

(87) Possess or land more white hake than allowed under § 648.86(e).

(88) Possess or land more GB winter flounder than allowed under § 648.86(j).

(89) If possessing a Ruhle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(6)(iv)(J)(*1*) or (b)(8)(v)(E)(*1*), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(*3*).

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued an open access multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

(1) Possess, at any time during a trip, or land per trip, more than the possession limit of NE multispecies specified in § 648.88(a), unless the vessel is a charter or party vessel fishing under the charter/party restrictions specified in § 648.89.

(2) Use or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

(3) Possess or land NE multispecies during the time period specified in § 648.88(a)(2).

(4) Violate any provision of the open access handgear permit restrictions as provided in § 648.88(a).

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a scallop multispecies possession limit permit to possess or land more than the possession limit of NE multispecies specified in § 648.88(c), or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in § 648.17.

(f) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a scallop permit under § 648.4(a)(2) to land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(g) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) through (f) of this section, it is unlawful for the owner or operator of a charter or party boat issued a multispecies permit, or of a recreational vessel, as applicable, unless otherwise specified in § 648.17, to:

(1) Fish with gear in violation of the restrictions specified in § 648.89(a).

(2) Possess cod, haddock, and Atlantic halibut in excess of the possession limits specified in § 648.89(c).

(3) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, NE multispecies for a commercial purpose as specified in § 648.89(d).

(4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition described in § 648.89(c)(1)(v) or, if the vessel has been issued a charter/party permit or is fishing under

charter/party regulations, fail to comply with the prohibition on fishing under § 648.89(c)(2)(v).

(5) If fishing under the recreational or charter/party regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(v) or (c)(2)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.

(h) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (g) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(1) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly declared into the DAS or Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii), has properly declared into a general category scallop fishery, and does not exceed the allowed possession limit for the LAGC scallop permit issued to the vessel as specified in § 648.52, or unless exempted from DAS allocations as provided in § 648.54.

(2) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.54.

(3) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(4) If the vessel is not subject to VMS requirements specified in § 648.10(b), fail to comply with the requirements of the call-in system specified in § 648.10(c).

(5) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.60(a)(3)(ii).

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits and confirmations of permit history, except as provided in § 648.4(a)(2)(i)(M).

(7) Fish for, possess, or land scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(2)(i) (E) or (F).

(8) Fish for, possess, or land scallops with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(2)(i) (E) or (F).

(9) Possess more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops, or participate in the scallop DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(10) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(11) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that do not meet the requirements of § 648.51(a)(3).

(12) Possess or use dredge gear that does not comply with the provisions and specifications in § 648.51(b).

(13) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator, or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

(14) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(15) Fish under the small dredge program specified in § 648.51(e) with more than five persons on board the vessel,

including the operator, unless otherwise authorized by the Regional Administrator or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

(16) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(17) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.

(18) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(19) Fail to comply with any requirement for declaring in and out of the DAS allocation program or other notification requirements specified in § 648.10.

(20) Fail to comply with any requirement for participating in the State Waters Exemption Program specified in § 648.54.

(21) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(22) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(23) Fail to comply with any of the provisions and specifications of § 648.60.

(24) Possess or land more than 50 bu (17.62 hL) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20′ N. Lat; or fished in any Sea Scallop Area Access Program specified in § 648.60, except as provided in § 648.54.

(25) Declare and initiate a trip into or fish in the areas specified in § 648.59(b) through (d) after the effective date of the notice in the FEDERAL REGISTER stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(26) Retain yellowtail flounder in the areas specified in § 648.59(b) through (d) after the effective date of the notice in the FEDERAL REGISTER stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(27) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.60.

(28) Fish for or land per trip, or possess at any time, scallops in the NGOM scallop management area after notification in the FEDERAL REGISTER that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20′ N. lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and unavailable for immediate use in accordance with § 648.23.

(i) *LAGC scallop vessels*. (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an LAGC scallop permit to do any of the following:

(i) Fail to comply with the LAGC scallop permit restrictions as specified in § 648.4(a)(2)(ii)(G) through (O);

(ii) Land scallops on more than one trip per calendar day;

(iii) Possess in-shell scallops while in possession of the maximum allowed amount of shucked scallops specified for each LAGC scallop permit category in § 648.62;

(iv) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing unless the vessel has been issued an Incidental scallop permit;

(v) Possess or use trawl gear that does not comply with any of the provisions or specifications in § 648.51(a), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program;

(vi) Possess or use dredge gear that does not comply with any of the provisions or specifications in § 648.51(b);

(vii) Refuse, or fail, to carry an observer after being requested to carry an observer by the Regional Administrator or designee;

(viii) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11;

(ix) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee;

(x) Fail to comply with any of the VMS requirements specified in §§ 648.10 and 648.60;

(xi) Fail to comply with any requirement for declaring in or out of the general category scallop fishery or other notification requirements specified in § 648.10(b);

(xii) Fail to comply with any of the requirements specified in § 648.60;

(xiii) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of the notification published in the FEDERAL REGISTER stating that the general category scallop TAC has been harvested as specified in § 648.60;

(xiv) Declare into, or leave port for, an area specified in § 648.59(b) through (d) after the effective date of the notification published in the FEDERAL REGISTER stating that the number of general category trips have been taken as specified in § 648.60;

(xv) Declare into, or leave port for, an area specified in § 648.59(b) through (d) after the effective date of the notification published in the FEDERAL REGISTER stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c);

(xvi) Declare into, or leave port for, the NGOM scallop management area specified in § 648.62 after the effective date of the notification published in the FEDERAL REGISTER stating that the general category scallop TAC has been harvested as specified in § 648.62;

(xvii) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of the notification published in the FEDERAL REGISTER that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42° 20′ N. Lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and unavailable for immediate use in accordance with § 648.23;

(xviii) Fail to comply with any of the requirements and restrictions for general category sectors and harvesting cooperatives specified in § 648.63; or

(xix) Fish for, land, or possess scallops at any time after 10 days from being notified that his or her appeal for an LAGC scallop permit has been denied and that the denial is the final decision of the Department of Commerce.

(xx) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an IFQ scallop permit to do any of the following:

(i) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hL) of in-shell scallops, unless the vessel is participating in the Area Access Program specified in § 648.60, is carrying an observer as specified in § 648.11, and an increase in the possession limit is authorized as specified in § 648.60(d)(2);

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hl) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) in-shell scallops, when not declared into the NGOM scallop management area, or is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use in accordance with § 648.23;

(iii) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line, or possess, or land per trip, more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS demarcation line, unless exempted from DAS allocations as provided in § 648.54;

(iv) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is properly declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60;

(v) Fish for, possess, or land scallops after the effective date of the notification in the FEDERAL REGISTER that the quarterly TAC specified in § 648.53(a)(8) has been harvested;

(vi) Fish for, possess, or land scallops in excess of a vessel's IFQ;

(vii) Have an ownership interest in vessels that collectively is more than 5 percent of the total IFQ scallop TAC specified in accordance with § 648.53(a)(5)(ii) and (iii), except as provided in § 648.4(h)(3)(ii);

(viii) Have an IFQ allocation on an IFQ scallop vessel of more than 2 percent of the total IFQ scallop TAC specified in accordance with § 648.53(a)(5)(ii) and (iii), except as provided in § 648.4(h)(3)(i);

(ix) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop TAC, except as provided in § 648.53(h)(3)(ii).

(x) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2 percent of the total IFQ scallop TAC, except as provided in § 648.53(h)(3)(i);

(xi) Fish for, possess, or land transferred IFQ prior to approval of the transfer by the Regional Administrator as specified in § 648.53(h)(5)(iv)(B);

(xii) Provide false information in relation to or on an application for an IFQ transfer required under § 648.53(h)(5)(iv);

(xiii) Request to transfer IFQ that has already been temporarily transferred from an IFQ scallop vessel in the same fishing year;

(xiv) Transfer scallop IFQ to another IFQ scallop vessel after the transferring vessel has landed scallops;

(xv) Transfer a portion of a vessel's scallop IFQ; or

(xvi) Transfer scallop IFQ to, or receive scallop IFQ on, a vessel that has not been issued a valid IFQ scallop permit.

(xvii) Fail to comply with cost recovery requirements as specified under § 648.53(g)(4)

(3) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an NGOM scallop permit to do any of the following:

(i) Declare into or leave port for a scallop trip, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62;

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hl) of in-shell scallops in or from the NGOM scallop management area, except when seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) in-shell scallops; or

(iii) Fish for, possess, or land scallops after the effective date of notification in the FEDERAL REGISTER that the NGOM scallop management area TAC has been harvested.

(4) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an Incidental scallop permit to fish for, possess, or retain, more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops, except the vessel may possess up to 10 bu (3.52 hL) of in-shell scallops while seaward of the VMS Demarcation Line.

(j) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.100(f), it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including a moratorium permit) to do any of the following:

(1) Possess 100 lb or more (45.4 kg or more) of summer flounder between May 1 and October 31, or 200 lb or more (90.7 kg or more) of summer flounder between November 1 and April 30, unless the vessel meets the minimum mesh size requirement specified in § 648.104(a), or is fishing in the exempted area with an exemption permit as specified in § 648.104(b)(1), or holds an exemption permit and is in transit

from the exemption area with nets properly stowed as specified in § 648.104(f), or is fishing with exempted gear specified in § 648.104(b)(2).

(2) Possess summer flounder in other than a box specified in § 648.105(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.104(a), unless the vessel is fishing pursuant to the exemptions specified in § 648.104(b).

(3) Land summer flounder for sale in a state after the effective date of the notification in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(6) Fish west or south, as appropriate, of the line specified in § 648.104(b)(1) if exempted from the minimum mesh requirement specified in § 648.104 by a summer flounder exemption permit.

(7) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(9) Offload, remove, or otherwise transfer, or attempt to offload, remove or otherwise transfer summer flounder from one vessel to another, unless that vessel has not been issued a summer flounder permit and fishes exclusively in state waters.

(k) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.120(e), it is unlawful for any person owning or operating a vessel issued a scup permit (including a moratorium permit) to do any of the following:

(1) Possess scup in excess of the threshold amount specified in § 648.123, unless the vessel meets the minimum mesh-size restrictions specified in § 648.123.

(2) Fail to keep scup separate from other species if fishing with nets having mesh that does not meet the minimum mesh-size restrictions specified in § 648.123(a).

(3) Land scup for sale after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(4) Possess nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(5) Fish with nets or netting that do not meet the minimum mesh restriction or that are modified, obstructed or constricted while in possession of scup in excess of the threshold amount specified in § 648.123.

(6) As of January 1, 1997, sell or transfer to another person for a commercial purpose, other than transport on land, any scup, unless the transferee has a dealer permit issued under § 648.6.

(7) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing for scup under the terms of a moratorium permit issued pursuant to § 648.4(a)(6).

(8) Use a scup pot or trap that does not have the hinges and fasteners made of degradable materials as specified in § 648.123.

(9) Use a scup trap or pot that does not have a minimum escape vent of the size specified in § 648.123.

(10) Use roller rig trawl gear equipped with rollers greater than the size specified in § 648.123.

(11) Possess scup in, or harvested from, the EEZ in an area closed, or before or after a season established pursuant to § 648.122.

(12) Use a scup trap or pot that is not marked in accordance with § 648.123(b)(3).

(13) Transfer scup at sea, or attempt to transfer at sea to any vessel, any scup taken from the EEZ, unless in compliance with the provisions of § 648.13(i).

(l) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.120(e), it is unlawful for the owner or operator of a party or charter boat issued a scup permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat to:

(1) Possess scup in excess of the possession limit established pursuant to § 648.125.

(2) Fish for scup other than during a season established pursuant to § 648.122.

(3) Sell scup or transfer scup to another person for a commercial purpose.

(4) Possess scup that do not meet the minimum fish size specified in § 648.124(b).

(m) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.100(f), it is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess summer flounder in excess of the possession limit established pursuant to § 648.105.

(2) Fish for summer flounder other than during a season specified pursuant to § 648.102.

(3) Sell or transfer summer flounder to another person for a commercial purpose.

(n) It is unlawful to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

(o) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a surf clam and ocean quahog permit or issued a surf clam and ocean quahog allocation permit under § 648.70, to land or possess any surf clams or ocean quahogs in excess of, or without, an individual allocation, or to transfer any surf clams or ocean quahogs to any person for a commercial purpose other than transport, unless that person has a surf clam and ocean quahog processor/dealer permit.

(p) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.21(g), it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

(1) Possess more than the incidental catch allowance of *Loligo* or butterfish, unless issued a Loligo squid and butterfish fishery moratorium permit.

(2) Possess more than the incidental catch allowance of *Illex* squid unless issued an *Illex* squid moratorium permit.

(3) Take, retain, possess, or land mackerel, squid, or butterfish in excess of a possession allowance specified at § 648.25.

(4) Take, retain, possess, or land mackerel, squid or butterfish after a total closure specified under § 648.22.

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for *Loligo* or butterfish specified in § 648.23, or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a)(3)(ii).

(6) Transfer squid or butterfish at sea to another vessel unless that other vessel has been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessel is permitted or a valid

squid/butterfish incidental catch permit and a letter of authorization by the Regional Administrator.

(7) Fail to comply with any measures implemented pursuant to § 648.21.

(8) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterfish fishery permit.

(9) Fail to carry on board a letter of authorization, if fishing in an experimental fishery pursuant to § 648.12.

(10) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower of 3000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor permit pursuant to § 648.6(a)(2).

(11) Possess 1,000 lb (0.45 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

(12) Enter or be in the areas described at § 648.23(a)(4).

(q) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.21(g), it is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 648.21(d).

(2) Sell or transfer mackerel, squid, or butterfish to another person for a commercial purpose.

(r) [Reserved]

(s) Any person fishing for, possessing, or landing scallops at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters.

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any owner or operator of a vessel issued a valid open access multispecies permit to possess or land any regulated species as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

(u) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.140(e), it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

(1) Fish for, catch, possess, land, or retain black sea bass in excess of the amount specified in § 648.144(a)(1)(i)(i.e. 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the minimum mesh requirement specified in § 648.144 (a).

(2) Possess black sea bass in other than a box specified in § 648.145(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.144 (a).

(3) Land black sea bass for sale in any state, or part thereof, north of 35°15.3′ N. lat. after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.144, unless the nets or netting are stowed in accordance with § 648.23(b).

(5) Fish with or possess rollers used in roller rig or rock hopper trawl gear that do not meet the requirements specified in § 648.144(a)(5).

(6) Fish with or possess pots or traps that do not meet the requirements specified in § 648.144(b).

(7) Sell or transfer to another person for a commercial purpose, other than transport on land, any black sea bass, unless the transferee has a valid black sea bass dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for

a party boat, while fishing commercially pursuant to a black sea bass moratorium permit.

(9) Possess, retain, or land black sea bass harvested in or from the EEZ in excess of the commercial possession limit established at § 648.140.

(10) Land black sea bass for sale in any state south of North Carolina.

(11) Possess black sea bass after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3′ N. lat.

(v) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.140(e), it is unlawful for the owner and operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess black sea bass in excess of the possession limit established pursuant to § 648.145.

(2) Fish for black sea bass other than during a season specified pursuant to § 648.142.

(3) Sell black sea bass or transfer black sea bass to another person for a commercial purpose.

(w) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.160(h), it is unlawful for any person to do any of the following:

(1) Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8)(i) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except solely for transport on land, Atlantic bluefish taken from a fishing vessel that were harvested in or from the EEZ unless issued, and in possession of, a valid Atlantic bluefish fishery dealer permit issued under § 648.6(a).

(3) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, Atlantic bluefish that were harvested in or from the EEZ, unless the vessel has been issued a valid bluefish permit under § 648.4(a)(8)(i).

(4) Land Atlantic bluefish for sale in a state after the effective date of the notification in the FEDERAL REGISTER , pursuant to § 648.161(b), which notifies permit holders that the commercial quota is no longer available in that state.

(5) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to an Atlantic bluefish permit issued under § 648.4(a)(8).

(6) Land Atlantic bluefish for sale after the effective date of the notification in the FEDERAL REGISTER pursuant to § 648.161(a), which notifies permit holders that the Atlantic bluefish fishery is closed.

(7) To purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(8) To purchase or otherwise receive for a commercial purpose bluefish harvested by a federally permitted vessel after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(x) For purposes of this section, the following presumptions apply:

(1) *Surf clams and ocean quahogs.* (i) Possession of surf clams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water in closed areas, or the presence of any part of a vessel's gear in the water more than 12 hours after an announcement closing the entire fishery becomes effective, is prima facie evidence

that such vessel was fishing in violation of the provisions of the Magnuson Act and these regulations.

(ii) Surf clams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70.

(iii) Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surf clam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.(70) or § 648.75(b).

(2) *Scallops*. Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(3) *Summer flounder*. All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(4) *NE multispecies*. (i) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(iii) All small-mesh multispecies retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

(5) *Mackerel, squid, and butterfish*. All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

(6) *Scup*. All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(7) *Black sea bass*. All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3′ N. lat.

(8) *Monkfish*. All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such fish were harvested by a vessel that fished exclusively in the NAFO Regulatory Area, as authorized under § 648.17.

(9) All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8)(ii) are deemed to have been harvested from the EEZ.

(10) *Atlantic herring*. All Atlantic herring retained or possessed on a vessel issued any permit under § 648.4 are

deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such Atlantic herring were harvested by a vessel fishing exclusively in state waters.

(11) *Tilefish*. All tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the tilefish management unit, unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in state waters.

(12) *Red crab*. All red crab retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.

(13) *Skates*. All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of all submitted evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the Skate Management Unit or only in state waters.

(y) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following, unless otherwise fishing in accordance with, and exempted under, the provisions of § 648.17:

(1) Fish for, possess, retain or land monkfish, unless:

(i) The monkfish are being fished for, or were harvested, in or from the EEZ by a vessel issued a valid monkfish permit under § 648.4(a)(9); or

(ii) The monkfish were harvested by a vessel not issued a Federal monkfish permit that fishes for or possesses monkfish exclusively in state waters; or

(iii) The monkfish were harvested in or from the EEZ by a vessel not issued a Federal monkfish permit that engaged in recreational fishing; or

(iv) The monkfish were harvested from the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(2) Land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.

(3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish without having been issued a valid monkfish vessel permit, unless the vessel fishes for monkfish exclusively in state waters, or exclusively in the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(4) Operate or act as an operator of a vessel fishing for, possessing, retaining, or landing monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to § 648.5, and this permit is onboard the vessel.

(5) Fish with, use, or have on board, while fishing under a monkfish DAS within the Northern Fishery Management Area or Southern Fishery Management Area as described in § 648.91(a) and (b), nets with mesh size smaller than the minimum mesh size specified in § 648.91(c).

(6) Violate any provision of the monkfish incidental catch permit restrictions as provided in §§ 648.4(a)(9)(ii) or 648.94(c).

(7) Fail to comply with the area restrictions applicable to limited access Category G and H vessels specified under § 648.92(b)(9).

(8) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession or trip limits specified in § 648.94 as is applicable to a vessel issued a monkfish limited access or incidental catch permit.

(9) Fail to comply with the monkfish size limit restrictions of § 648.93 when issued a valid monkfish permit under § 648.4(a)(9).

(10) Fail to comply with the monkfish possession limits and landing

restrictions, including liver landing restrictions, specified under § 648.94 when issued a valid monkfish permit under § 648.4(a)(9).

(11) Fail to comply with the monkfish DAS provisions specified at § 648.92 when issued a valid limited access monkfish permit, and fishing for, possessing, or landing monkfish in excess of the incidental catch limits specified at § 648.94 (c).

(12) If carrying a VMS unit under § 648.10:

(i) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage as specified in § 648.10.

(13) Combine, transfer, or consolidate monkfish DAS allocations.

(14) Fish for, possess, or land monkfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(E) and (F).

(15) Fish for, possess, or land monkfish with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(E) and (F).

(16) Fail to comply with any provision of the DAS notification program as specified in § 648.10.

(17) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(18) Fail to produce gillnet tags when requested by an authorized officer.

(19) Tagging a gillnet with or otherwise using or possessing a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or using or possessing a false gillnet tag.

(20) Selling, transferring, or giving away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(21) Fail to comply with the area declaration requirements specified at § 648.94(f) when fishing under a scallop, NE multispecies, or monkfish DAS exclusively in the NFMA under the less restrictive measures of that area.

(z) *Small-mesh multispecies.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, and subject to paragraph (a)(32) of this section, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, small-mesh multispecies from one vessel to another in excess of the limits specified in § 648.13.

(2) [Reserved]

(aa) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid spiny dogfish permit or issued an operator's permit to do any of the following:

(1) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, spiny dogfish, unless the dealer or transferee has a dealer permit issued under § 648.6(a).

(2) Fish for or possess spiny dogfish harvested in or from the EEZ after the effective date of the notification published in the FEDERAL REGISTER stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(3) Land spiny dogfish for a commercial purpose after the effective date of the notification published in the FEDERAL REGISTER stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(4) Violate any of the provisions prohibiting finning in §§ 600.1203 and 600.1204, part 600, subpart N that are applicable to the dogfish fishery.

(5)–(6) [Reserved]

(7) Possess more than the possession limit of spiny dogfish specified under § 648.235. The possession limit is the maximum amount that may be landed in any 1 calendar day.

(bb) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, retain or land Atlantic herring, unless:

(i) The Atlantic herring are being fished for or were harvested in or from the EEZ by a vessel holding a valid Atlantic herring permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

(ii) The Atlantic herring were harvested by a vessel not issued an Atlantic herring permit that was fishing exclusively in state waters; or

(iii) The Atlantic herring were harvested in or from the EEZ by a vessel engaged in recreational fishing; or

(iv) Unless otherwise specified in accordance with § 648.17.

(2) Operate, or act as an operator of, a vessel with an Atlantic herring permit, or a vessel fishing for or possessing Atlantic herring in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.

(3) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a dealer, or in the capacity of a dealer, Atlantic herring that were harvested in or from the EEZ, without having been issued, and in possession of, a valid Atlantic herring dealer permit.

(4) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a processor, or in the capacity of a processor, Atlantic herring from a fishing vessel with an Atlantic herring permit or from a dealer with an Atlantic herring dealer permit, without having been issued, and in possession of, a valid Atlantic herring processor permit.

(5) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any Atlantic herring, unless the vessel has been issued an Atlantic herring permit, or unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.

(6) Purchase, possess, or receive, for a commercial purpose, or attempt to purchase, possess or receive, for a commercial purpose, Atlantic herring caught by a vessel without an Atlantic herring permit, unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.

(7) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell > 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land > 2,000 lb (907.2 kg) of Atlantic herring per day in or from a management area closed pursuant to § 648.201(a), if the vessel has been issued a valid Atlantic herring permit.

(8) [Reserved]

(9) Transfer or attempt to transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104-297 after the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200.

(10) Transit an area of the EEZ that is subject to a closure or other restraints on fishing to fishing for Atlantic herring pursuant to § 648.201(a) with > 2,000 lb (907.2 kg) of herring on board, unless all fishing gear is stowed as specified by § 648.23(b).

(11) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

(12) Process Atlantic herring caught in or from the EEZ in excess of the specification of USAP with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

(13) Discard herring carcasses in the EEZ, or at sea if a federally-permitted vessel, after removing the roe.

(14) Catch, take, or harvest Atlantic herring in or from the EEZ for roe in excess of any allowed limit that may be established pursuant to § 648.206(b)(24).

(15) Catch, take, or harvest Atlantic herring in or from the EEZ, unless equipped with an operable VMS unit if the vessel is a limited access herring vessel as defined in § 648.2.

(16) Receive Atlantic herring in or from the EEZ solely for transport, unless issued a letter of authorization from the Regional Administrator.

(17) Fail to comply with any of the requirements of a letter of authorization from the Regional Administrator.

(18) If the vessel is a limited access herring vessel and is fishing for herring, fail to notify the NMFS Office of Law Enforcement of the time and date

of landing via VMS at least 6 hr prior to landing or crossing the VMS demarcation line on its return trip to port.

(19) If the vessel is a limited access herring vessel and is fishing for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17), fail to notify NMFS at least 72 hr prior to departing on a trip for the purposes of observer deployment.

(20) Possess, land, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the GOM/GB Herring Exemption Area defined in § 648.86(a)(3)(ii)(A)(*1*) following the effective date of the determination that the haddock cap has been reached pursuant to § 648.86(a)(3), unless all of the herring possessed or landed by a vessel was caught outside of that area.

(21) If fishing with midwater trawl or a purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(22) If a limited access herring vessel, discard haddock at sea that has been brought on deck or pumped into the hold.

(23) Transit the GOM/GB Herring Exemption Area when that area is limited to the 2,000–lb (907.2–kg) limit specified in § 648.86(a)(3)(ii)(A)(*1*) with more than 2,000 lb (907.2 kg) of herring, unless all the herring on board was caught outside of that area and all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(24) Fish for herring in Area 1A between June 1 and September 30 with any gear other than purse seines or fixed gear.

(25) Transit Area 1A between June 1 and September 30 with more than 2,000 lb (907.2 kg) of herring on board with mid-water trawl gear not properly stowed as per § 648.23(b).

(26) Possess or land more herring than is allowed for by the vessel's Atlantic herring permit.

(cc) In addition to the general prohibitions specified in § 600.725 of this chapter, unless participating in a research activity as described in § 648.290(e), it is unlawful for any person owning or operating a vessel to do any of the following:

(1) Fish for, possess, retain or land tilefish, unless:

(i) The tilefish are being fished for or were harvested in or from the tilefish management unit by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

(ii) The tilefish were harvested by a vessel not issued a tilefish permit that was fishing exclusively in state waters; or

(iii) The tilefish were harvested in or from the tilefish management unit by a vessel engaged in recreational fishing.

(2) Operate, or act as an operator of, a vessel with a tilefish permit, or a vessel fishing for or possessing tilefish in or from the tilefish management unit, unless the operator has been issued, and is in possession of, a valid operator permit.

(3) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a dealer, or in the capacity of a dealer, tilefish that were harvested in or from the tilefish management unit, without having been issued, and in possession of, a valid tilefish dealer permit.

(4) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any tilefish, unless the vessel has been issued a tilefish permit, or unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in state waters.

(5) Purchase, possess, or receive, for a commercial purpose, or attempt to purchase, possess, or receive, for a commercial purpose, tilefish caught by a vessel without a tilefish permit, unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in state waters.

(6) [Reserved]

(7) Possess tilefish harvested in or from the tilefish management unit in excess of the trip limit, pursuant to § 648.292, unless issued a limited access tilefish permit.

(8) Land tilefish harvested in or from the tilefish management unit for sale after the effective date of the notification in the FEDERAL REGISTER, pursuant to § 648.291, which notifies permit

holders in a limited access category that the quota for that category is no longer available.

(9) Land tilefish in or from the tilefish management unit, in excess of the trip limit pursuant to § 648.292, unless the vessel holds a valid limited access tilefish permit.

(dd) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to do any of the following:

(1) Catch, possess, transport, land, sell, trade, or barter, any red crab or red crab parts in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit or red crab incidental catch permit issued by the Regional Administrator under this subpart.

(2) Land, or possess on board a vessel, greater than the possession or landing limits specified in § 648.263.

(3) Fail to comply with the recordkeeping and reporting requirements of § 648.7.

(4) Transfer at sea, either directly or indirectly, or attempt to transfer at sea to any vessel, any red crab or red crab parts, taken in or from the EEZ portion of the Red Crab Management Unit.

(5) Purchase, possess, or receive greater than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit under this subpart.

(6) Purchase, possess, or receive up to 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit or red crab incidental catch permit under this subpart.

(7) Fish for, catch, possess, transport, land, sell, trade, or barter, greater than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), per fishing trip, in or from the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit issued by the Regional Administrator under this subpart and fishing under a red crab DAS.

(8) Fail to comply with the provisions of the DAS notification program specified in §§ 648.262(b)(5) and 648.10, if the vessel has been issued a valid limited access red crab permit.

(9) Fish for, catch, possess, transport, land, sell, trade, or barter, in the Red Crab Management Unit under a red crab DAS if the vessel has declared out of the fishery prior to the start of the fishing year.

(10) Fish for, catch, possess, transport, land, sell, trade, or barter, red crab in excess of landing limits specified in § 648.263.

(11) Possess, deploy, fish with, haul, harvest red crab from, or carry on board a vessel in excess of the trap/pot and/or string limit specified at § 648.264(a)(2) when fishing under a red crab DAS.

(12) Retain, possess, or land female red crabs in excess of one standard U.S. fish tote if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(13) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(14) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid limited access red crab permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.

(15) Retain, possess, or land in excess of two claws and eight legs per crab if the vessel has been issued a valid red crab incidental catch permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.

(16) Fully process red crabs at sea, i.e., any activity that removes meat from any part of a red crab, unless a preponderance of the evidence shows that the vessel fished exclusively in state waters and has not been issued a valid federal permit.

(17) Fail to comply with any gear marking requirement specified at § 648.264(a)(5).

(18) Possess, fish, or deploy parlor traps/pots if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(19) Possess, fish, or deploy red crab traps/pots larger than the maximum size specified at § 648.263(a)(4), if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(ee) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to fish for, possess, or land skates in or from the EEZ portion of the Skate Management Unit, unless in possession of a valid Federal skate vessel permit or onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of whole skates as bait only less than the maximum size specified at § 648.322(b)(2) and in accordance with § 648.322(c).

(ff) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(1) Fail to comply with the conditions of the skate wing possession and landing limits for winter skates specified at § 648.322, unless holding a letter of authorization to fish for and land skates as bait only at § 648.322(b).

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.7(a)(1)(iii) and (b)(1)(iii).

(3) Transfer at sea or attempt to transfer at sea to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§ 648.13(b) and 648.322(b).

(4) Purchase, possess, trade, barter or receive skates caught in the EEZ portion of the Skate Management Unit by a vessel that has not been issued a valid Federal skate permit under this part.

(5) Fail to comply with the provisions of the DAS notification program specified in §§ 648.53, 648.82, and 648.92, for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, respectively, when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(6) Fish for, catch, possess, transport, land, sell, trade, or barter whole skates and skate wings in excess of the possession limits specified at § 648.322.

(7) Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

(gg) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit specified at § 648.2.

(2) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.14, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTES: 1. At 72 FR 35201, June 27, 2007, § 648.14 was amended by revising paragraphs (a)(170) through (171), effective July 1, 2007, through December 31, 2007. At 72 FR 74207, this effective date was extended to December 31, 2008.

2. At 73 FR 38341, July 7, 2008, § 648.14 was amended by suspending paragraphs (a)(170) and (171) and adding paragraphs (a)(181) and (182), effective July 2, 2008 to Dec. 29, 2008.

§ 648.15 Facilitation of enforcement.

(a) *General.* See § 600.504 of this chapter.

(b) *Special notification requirements applicable to surfclam and ocean quahog vessel owners and operators.* (1) *Surfclam and ocean quahog open access permitted vessels.* Vessel owners or operators issued an open access surfclam or ocean quahog open access permit for fishing in the ITQ Program, as specified at § 648.70, are required to declare their intended fishing activity via VMS prior to leaving port.

(2) *Maine mahogany quahog limited access permitted vessels.* Beginning January 1, 2009, vessel owners or operators issued a limited access Maine mahogany quahog permit for fishing for Maine mahogany quahogs in the Maine mahogany quahog zone, as specified at § 648.76, are required to declare via VMS, prior to leaving port, and entering the Maine mahogany quahog zone, their intended fishing activity, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(*1*).

(3) *Declaration out of surfclam and ocean quahog fisheries.* Owners or operators that are transiting between ports or fishing in a fishery other than surfclams and ocean quahogs must either declare out of fisheries or declare the appropriate fishery, if required, via the VMS unit, before leaving port. The owner or operator discontinuing a fishing trip in the EEZ or Maine mahogany quahog zone must return to port and offload any surfclams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(4) *Inspection by authorized officer.* The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

(5) *Authorization for use of fishing trip notification via telephone.* The Regional Administrator may authorize or require the notification of surfclam or ocean quahog fishing trip information via a telephone call to the NMFS Office of Law Enforcement nearest to the point of offloading, instead of the use of VMS. If authorized, the vessel owner or operator must accurately provide the following information prior to departure of his/her vessel from the dock to fish for surfclams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surfclams or ocean quahogs; expected date, time, and location of landing; and name of individual providing notice. If use of a telephone call-in notification is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the FEDERAL REGISTER, e-mail, or other appropriate means.

(c) *Radio hails.* Permit holders, while underway, must be alert for communication conveying enforcement instructions and immediately answer via VHF-FM radio, channel 16 when hailed by an authorized officer. Vessels not required to have VHF-FM radios by the Coast Guard are exempt from this requirement.

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit. Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Law enforcement officials must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at § 648.7.

(e) *Retention of haddock by limited access herring vessels.* Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard any haddock that has been brought on the deck or pumped into the hold.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 63 FR 27485, May 19, 1998; 71 FR 46875, Aug. 15, 2006; 72 FR 11276, Mar. 12, 2007; 72 FR 51703, Sept. 11, 2007]

§ 648.16 Penalties.

See § 600.735.

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) *Fisheries included under exemption*—(1) *NE multispecies.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements

specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish*. A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(b) *General requirements*. (1) The vessel operator has a valid letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the High Seas Fishing Compliance Permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

[70 FR 21942, Apr. 28, 2005]

§ 648.18 Standardized bycatch reporting methodology.

NMFS shall comply with the Standardized Bycatch Reporting Methodology (SBRM) provisions established in the following fishery management plans: Atlantic Bluefish; Atlantic Herring; Atlantic Salmon; Deep-Sea Red Crab; Mackerel, Squid, and Butterfish; Monkfish; Northeast Multispecies; Northeast Skate Complex; Sea Scallop; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; Surfclam and Ocean Quahog; and Tilefish.

[73 FR 4753, Jan. 28, 2008]

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

§ 648.20 Maximum optimum yield (OYs).

The OYs specified pursuant to § 648.21 during a fishing year may not exceed the following amounts:

(a) Mackerel—that quantity of mackerel that is less than or equal to the allowable biological catch (ABC) in U.S. waters specified pursuant to § 648.21.

(b) *Loligo*–the catch associated with a fishing mortality rate of $F_{Threshold}$.

(c) *Illex*—catch associated with a fishing mortality rate of F_{MSY}.

(d) Butterfish—the catch associated with a fishing mortality rate of F_{MSY}.

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997; 64 FR 57593, Oct. 26, 1999; 73 FR 37388, July 1, 2008]

§ 648.21 Procedures for determining initial annual amounts.

(a) *Initial recommended annual specifications*. The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC:

(1) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) IOY, including RQ, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish, which, subject to annual review, may be specified for a period of up to 3 years;

(3) IOY, including RQ, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel, which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of

TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* squid as specified in paragraph (e) of this section.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial, recreational, and research project landings; discards; current estimates of fishing mortality; stock status; the most recent estimates of recruitment; virtual population analysis results; levels of noncompliance by harvesters or individual states; impact of size/mesh regulations; results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity; results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Loligo and/or Illex Squid.* (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a RQ and DAH. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RQ, if applicable.

(2) *Mackerel.* (i) Mackerel ABC must be calculated using the formula ABC = T − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} at B_{MSY} or greater and decreases linearly to zero at 1/2 B_{MSY} or below. Values for F_{target} and B_{MSY} are as calculated in the most recent stock assessment.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of RQ, DAH, and TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH, DAP, and JVP will be set after deduction for RQ, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson-Stevens Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential of mackerel producing countries.

(B) Total world import demand of mackerel consuming countries.

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(D) Increased/decreased revenues to the United States from foreign fees.

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(F) Increased/decreased revenues to U.S. processors and exporters.

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(H) Increases/decreases in U.S. processing productivity.

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest

equal to the maximum OY, the Monitoring Committee shall recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a RQ, DAH, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RQ, if applicable.

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) Research quotas set from a range of 0 to 3 percent of IOY.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of *Loligo*, *Illex*, and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(ii).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational harvest limit, set after reductions for research quotas.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

(13) Changes, as appropriate, to the Northeast Region SBRM, including the coefficient of variation (CV) based performance standard, fishery stratification, and/or reports.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish notification in the FEDERAL REGISTER proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30–day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the FEDERAL REGISTER prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications contained in the FEDERAL REGISTER notification will not be exceeded. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that

the specifications will not be exceeded and responses to the public comments will be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the Federal Register stating the reasons for such an action and providing a 30–day public comment period.

(f) *Distribution of annual Loligo squid commercial quota.* (1) A commercial quota will be allocated annually for *Loligo* squid into trimester periods, based on the following percentages:

Trimester	Percent
I. January-April	43.0
II. May-August	17.0
III. September-October	40.0

(2) Any underages of commercial period quota for Trimester I and II will be applied to Trimester III of the same year, and any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

(g) *Research quota.* Prior to the Council's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Council.

(2) NMFS will convene a review panel including the Council's Comprehensive Management Committee, as well as technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research and/or compensation trips will have to be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the FEDERAL REGISTER in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as

part of the annual quota specification packages submitted by the Council; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the Council, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.745(b).

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997; 64 FR 57593, Oct. 26, 1999; 65 FR 16345, Mar. 28, 2000; 65 FR 55927, Sept. 15, 2000; 66 FR 13028, Mar. 2, 2001; 66 FR 35566, July 6, 2001; 66 FR 42159, Aug. 10, 2001; 67 FR 3627, Jan. 25, 2002; 67 FR 44394, July 2, 2002; 68 FR 60, Jan. 2, 2003; 69 FR 16178, Mar. 29, 2004; 71 FR 63270, Oct. 30, 2006; 72 FR 4216, Jan. 30, 2007; 72 FR 8632, Feb. 27, 2007; 73 FR 4753, Jan. 28, 2008; 73 FR 37388, July 1, 2008]

§ 648.22 Closure of the fishery.

(a) *Closing procedures*. (1) NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the mackerel fishery in the EEZ and the incidental catches specified for mackerel at § 648.25 will be prohibited.

(2) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the *Loligo* quota is harvested in Trimesters I and II, and when 95 percent of the *Loligo* DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(3) NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(4) NMFS shall close the directed butterfish fishery in the EEZ when the Regional Administrator projects that 80 percent of the butterfish DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(b) *Notification*. Upon determining that a closure is necessary, the Assistant Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the FEDERAL REGISTER.

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997; 65 FR 16345, Mar. 28, 2000; 65 FR 81765, Dec. 27, 2000; 66 FR 13028, Mar. 2, 2001; 69 FR 4864, Feb. 2, 2004; 72 FR 4217, Jan. 30, 2007; 72 FR 8632, Feb. 27, 2007; 73 FR 18449, Apr. 4, 2008]

EDITORIAL NOTE: At 72 FR 4217, Jan. 30, 2007, § 648.22(d) was added; however, the amendment could not be incorporated because the text was not provided.

§ 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions*. (1) Vessels subject to the mesh restrictions outlined in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of

1⅞ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction*. Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1⅞ inches (48 mm) diamond mesh, inside stretch measure. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 4½ inches (11.43 cm) diamond mesh, inside stretch measure. For the purpose of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Illex fishery*. Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ and fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request) are exempt from the *Loligo* gear requirements specified at paragraph (a)(3) of this section, provided they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(3) of this section, when the vessel is landward of the specified coordinates.

Point	N. Lat.	W. Long.
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	67°10.0′
M10	41°18.6′	66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′

(4) *Mackerel, squid, and butterfish bottom trawling restricted areas*. (i) *Oceanographer Canyon*. No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Oceanographer Canyon or be in the Oceanographer Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. Oceanographer Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

OCEANOGRAPHER CANYON

Point	N. Lat.	W. Long.
OC1	40°10.0′	68°12.0′
OC2	40°24.0′	68°09.0′
OC3	40°24.0′	68°08.0′
OC4	40°10.0′	67°59.0′
OC1	40°10.0′	68°12.0′

(ii) *Lydonia Canyon*. No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Lydonia Canyon or be in the Lydonia Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. Lydonia Canyon is defined by straight lines connecting the following

points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

LYDONIA CANYON

Point	N. Lat.	W. Long.
LC1	40°16.0′	67°34.0′
LC2	40°16.0′	67°42.0′
LC3	40°20.0′	67°43.0′
LC4	40°27.0′	67°40.0′
LC5	40°27.0′	67°38.0′
LC1	40°16.0′	67°34.0′

(b) Definition of ''not available for immediate use.'' Gear that is shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Nets.* (i) *Below deck stowage.* (A) It is stored below the main working deck from which it is deployed and retrieved;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference.

(ii) *On-deck stowage.* (A) It is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) *On-reel stowage.* (A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the net; and

(C) The codend is removed and stored below deck.

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area.* (A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the doors; and

(C) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend.

(2) *Scallop dredges.* (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unuseable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

(3) *Hook gear (other than pelagic).* All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear.* All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

(5) *Other methods of stowage.* Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the FEDERAL REGISTER.

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration or other means that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be

more than 2 ft (61 cm) longer than the outside webbing.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 63 FR 1774, Jan. 12, 1998; 64 FR 24073, May 5, 1999; 65 FR 16345, Mar. 28, 2000; 65 FR 37911, June 19, 2000; 68 FR 9586, Feb. 28, 2003; 69 FR 22951, Apr. 27, 2004; 71 FR 63270, Oct. 30, 2006; 73 FR 18449, Apr. 4, 2008; 73 FR 37388, July 1, 2008]

§ 648.24 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of EFH (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs), any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures

should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[64 FR 57593, Oct. 26, 1999, as amended at 73 FR 4753, Jan. 28, 2008]

§ 648.25 Possession restrictions.

(a) *Atlantic mackerel.* During a closure of the directed Atlantic mackerel fishery, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(b) *Loligo.* During a closure of the directed fishery for *Loligo*, vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a *Loligo* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time and may only land Loligo once on any calendar day.

(c) *Illex.* During a closure of the directed fishery for *Illex*, vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish.* (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

[73 FR 18450, Apr. 4, 2008]

Subpart C—Management Measures for Atlantic Salmon

§ 648.40 Prohibition on possession.

(a) *Incidental catch.* All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ

must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption*. The possession of Atlantic salmon is prima facie evidence that such Atlantic salmon were taken in violation of this regulation. Evidence that such fish were harvested in state waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

§ 648.41 Framework specifications.

(a) *Within season management action*. The New England Fishery Management Council (NEFMC) may, at any time, initiate action to implement, add to or adjust Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ, provided such an action is consistent with the goals and objectives of the Atlantic Salmon FMP.

(b) *Framework process*. After initiation of an action to implement, add to or adjust an Atlantic salmon management measure to allow for an Atlantic salmon aquaculture project in the EEZ, the NEFMC shall develop and analyze Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on aquaculture management measures must come from one or more of the following categories: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones and any other management measures currently included in the FMP.

(c) *NEFMC recommendation*. After developing Atlantic salmon management measures and receiving public testimony, the NEFMC shall make a recommendation to NMFS. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If NMFS concurs with the NEFMC's recommendation to issue the management measures as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of measures adopted following their implementation as a final rule.

(d) *NMFS action*. If the NEFMC's recommendation includes implementation of management measures and, after reviewing the NEFMC's recommendation and supporting information:

(1) NMFS concurs with the NEFMC's recommended management measures and determines that the recommended measures should be issued as a final rule based on the factors specified in paragraph (c)(1) through (4) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(2) NMFS concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the NEFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(3) NMFS does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(e) *Emergency action*. Nothing in this section is meant to derogate from the

authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[64 FR 40520, July 27, 1999]

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

SOURCE: 69 FR 35215, June 23, 2004, unless otherwise noted.

§ 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (8.9 cm). Shell height is a straight line measurement from the hinge to the part of the shell that is farthest away from the hinge.

(b) *Compliance and sampling.* Any time at landing or after, including when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer, compliance with the minimum shell-height standard shall be determined as follows: Samples of 40 scallops each shall be taken at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 sample groups (400 scallops) be examined. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are shorter than the shell height specified. The total amount of scallops in possession shall be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the minimum standard.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, as specified in § 648.23, or unless the vessel is fishing under the Northeast multispecies or monkfish DAS programs.

(2) *Net requirements*—(i) *Minimum mesh size.* Subject to applicable minimum mesh size restrictions for other fisheries as specified under this part, the mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh

configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of ''dredge or dredge gear'' in § 648.2, *i.e.*, the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

(2) *Minimum mesh size.* The mesh size of a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10-inch (25.4-cm) square or diamond mesh.

(3) *Minimum ring size.* (i) Unless otherwise required under the Sea Scallop Area Access program specified in § 648.60(a)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(iii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, *i.e.*, ''hangers,'' are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. A copy of a diagram showing a schematic of a legal dredge ring pattern is available from the Regional Administrator upon request.

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* In addition to the minimum twine top mesh size specified in paragraph (b)(2) of this section, vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if a vessel is rigged with only one dredge and such dredge is greater than 8 ft (2.4 m) in width, there must be at least seven rows of

non-overlapping steel rings unobstructed by netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) If a vessel is rigged with only one dredge, and such dredge is less than 8 ft (2.4 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(c) *Crew restrictions*. Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, except as follows:

(1) There is no restriction on the number of people on board for vessels participating in the Sea Scallop Area Access Program as specified in § 648.60;

(2) Vessels participating in the small dredge program are restricted as specified in paragraph (e) of this section;

(3) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(4) A certified at-sea observer is on board, as required by § 648.11(g).

(d) *Sorting and shucking machines*. (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program.

(e) *Small dredge program restrictions*. Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not use or have more than one dredge on board.

(3) The vessel may have no more than five people, including the operator, on board, except as follows:

(i) There is no restriction on the number of people on board for vessels participating in the Sea Scallop Area Access Program as specified in § 648.60;

(ii) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

(f) *Restrictions on the use of trawl nets*. (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.60, may not fish with a trawl net in the Access Areas specified in § 648.59(b) through (d).

(2) *Replacement vessels*. A vessel that is replacing a vessel authorized to use trawl nets to fish for scallops under scallop DAS may also be authorized to use trawl nets to fish for scallops under scallop DAS if it meets the following criteria:

(i) Has not fished for scallops with a scallop dredge after December 31, 1987; or

(ii) Has fished for scallops with a scallop dredge on no more than 10 trips

from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450.

[69 FR 35215, June 23, 2004, as amended at 69 FR 63473, Nov. 2, 2004; 71 FR 33226, June 8, 2006; 72 FR 8288, Feb. 26, 2007; 72 FR 32558, June 13, 2007; 73 FR 20122, Apr. 14, 2008]

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 400 lb (181.4 kg) of shucked scallops, or possess more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hl) of in-shell scallops seaward of the VMS demarcation line on a properly declared IFQ scallop trip.

(b) A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked, or 25 bu (8.81 hL) of in-shell scallops. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) A vessel issued an Incidental scallop permit, or an IFQ or NGOM scallop permit that is not declared into the IFQ or NGOM scallop fishery as required under § 648.10(b)(4), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line.

(d) Owners or operators of vessels with a limited access scallop permit that have properly declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.60(a)(5).

(e) Owners or operators of vessels issued limited access permits fishing in or transiting the area south of 42°20′N. lat. at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.6 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) A vessel that is declared into the Elephant Trunk Access Area Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

[73 FR 20122, Apr. 14, 2008]

§ 648.53 Total allowable catch, DAS allocations, and Individual Fishing Quotas.

(a) *Target total allowable catch (TAC) for scallop fishery*. The annual target total TAC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55. The annual target TAC shall include the TAC for all scallop vessels fishing in open areas and Sea Scallop Access Areas, but shall exclude the TAC established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62. After deducting the total estimated incidental catch of scallops, as specified at § 648.53(a)(9), by vessels issued incidental catch general category scallop permits, and limited access and limited access general category scallop vessels not declared into the scallop fishery, the annual target TAC for open and Sea Scallop Access Areas shall each be divided between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) through (a)(6) of this section. In the event that a framework adjustment does not implement an annual TAC for a fishing or part of a fishing year, the

preceding fishing year's scallop regulations shall apply.

(1) *2008 fishing year target TAC for scallop fishery*. 20,140 mt, 90 percent of which will be allocated to the limited access fishery, and 10 percent of which will be allocated to the general category fishery.

(2) *2009 fishing year target TAC for scallop fishery*. 20,820 mt, 94.5 percent of which will be allocated to the limited access fishery, 5 percent of which will be allocated to IFQ scallop vessels, and 0.5 percent will be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. If the IFQ program is delayed beyond March 1, 2009, as specified at paragraph (a)(7) of this section, 90 percent of the TAC will be allocated to the limited access fishery, and 10 percent of the TAC will be allocated to the general category fishery.

(3) *Access area TAC*. The TAC for each Access Area shall be determined through the framework adjustment process described in § 648.55 and specified in § 648.59. The TAC set-asides for observer coverage and research shall be deducted from the TAC in each Access Area prior to assigning the target TAC and trip allocations for limited access scallop vessels, and prior to allocating TAC to limited access general category vessels. The percentage of the TAC for each access area allocated to limited access vessels, limited access general category vessels, and limited access vessels fishing under general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(4) *Open area target TAC for limited access vessels*. The open area TAC specified in this paragraph (a)(4) excludes the open area DAS set-aside specified in (g)(1) and (2) of this section, the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(i) *2008 fishing year*. For the 2008 fishing year, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section shall be 6,274 mt.

(ii) *2009 fishing year*. For the 2009 fishing year, the target TAC for limited access vessels fishing under the scallop DAS program specified in this section shall be 7,458 mt., unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section.

(5) *Open area TAC for IFQ scallop vessels*. The open area TAC specified in this paragraph (a)(5) excludes the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(i) *2008 fishing year*. For the 2008 fishing year, IFQ scallop vessels, and limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs, shall be allocated 1,369 mt.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit*. For the 2009 fishing year, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels without a limited access scallop permit shall be 536 mt.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit*. For the 2009 fishing year, unless the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(7) of this section, limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a) minus the TAC for all access areas specified in accordance with paragraph (a)(3) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, the allocation of TAC to IFQ scallop vessels is specified in paragraph (a)(7) of this section.

(6) *Northern Gulf of Maine Scallop Fishery*. The TAC for the Northern Gulf of Maine Scallop Fishery shall be specified in accordance with § 648.62, through the framework adjustment process specified in § 648.55. The Northern Gulf of Maine Scallop Fishery TAC is specified in § 648.62(b)(1).

(7) *Delay of the IFQ program*. If the IFQ program implementation is delayed beyond March 1, 2009, the quarterly fleetwide TAC will remain in effect. Under such a scenario, the overall

IFQ fishery allocation of 4,551,700 lb (2,065 mt) will be distributed as follows: Quarter 1—1,593,095 lb (723 mt); Quarter 2—1,820,680 lb (826 mt), Quarter 3—682,755 lb (310 mt), Quarter 4—455,170 lb (206 mt). If the Regional Administrator determines that the IFQ program cannot be implemented by March 1, 2009, NMFS shall inform all scallop vessel owners that the IFQ program shall not take effect.

(8) *Distribution of transition period TAC*—(i) *Allocation*. For the 2008 fishing year, and subsequent fishing years until the IFQ program is implemented as specified in paragraph (a)(7) of this section, the TAC for IFQ scallop vessels shall be allocated as specified in paragraphs (a)(5) of this section into quarterly periods. The percentage allocations for each period allocated to the IFQ scallop vessels, including limited access vessels fishing under an IFQ scallop permit and vessels under appeal for an IFQ scallop permit pursuant to § 648.4(a)(2)(ii) shall be specified in the framework adjustment process as specified in § 648.55 and are specified in the following table:

Quarter	Percent	TAC
I. March–May	35	1,523,375 lb (475.25 mt).
II. June–August	40	1,741,000 lb (547.83 mt).
III. September–November	15	652,875 lb (205.39 mt).
IV. December–February	10	435,250 lb (136.93 mt).

(ii) *Deductions of landings*. All landings by general category scallop vessels prior to July 1, 2008, and all landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit after June 30, 2008, shall be deducted from the TAC allocations specified in the table in paragraph (a)(8)(i) of this section.

(iii) *Closure of fishery for the quarter*. No vessel issued an IFQ scallop permit, or vessel issued a temporary letter of authorization to fish for scallops while their appeal for an IFQ scallop permit is pending pursuant to § 648.4(a)(2)(ii), may possess, retain, or land scallops once the Regional Administrator has provided notification in the FEDERAL REGISTER that the scallop total allowable catch for the specified quarter, in accordance with this paragraph (a)(8) has been reached.

(iv) *Overages and underages of quarterly TACs*. Any overage or underage of catch during quarter 1 as specified in this paragraph (a)(8) shall be applied to the third quarter TAC as specified in this paragraph (a)(8). Any overage or underage of catch during quarters 2 and 3, as specified in this paragraph (a)(8), shall be applied to the fourth quarter TAC as specified in this paragraph (a)(8).

(9) *Scallop incidental catch target TAC*. The 2008 and 2009 incidental catch target TACs for vessels with incidental catch scallop permits are 50,000 lb (22,680 kg) per year.

(b) *DAS allocations*. (1) Total DAS to be used in all areas other than those specified in § 648.59, shall be specified through the framework adjustment process as specified in § 648.55, using the target total allowable catch for open areas specified in paragraph (a) of this section, and estimated catch per unit effort.

(2) Prior to setting the DAS allocations specified in paragraph (b)(4) of this section, 1 percent of total available DAS will be set aside to help defray the cost of observers, as specified in paragraph (h)(1) of this section. Two percent of total available DAS will be set aside to pay for scallop related research, as outlined in paragraph (h)(2) of this section.

(3) *Assignment to DAS categories*. Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category. A vessel whose owner/operator has properly declared out of the scallop DAS fishery, pursuant to the provisions of § 648.10, including vessels that have used up their maximum allocated

DAS, may leave port without being assessed a DAS, as long as it has made appropriate VMS declaration as specified in § 648.10(b)(4), possesses, fishes for, or retains the amount of scallops allowed by its general category permit, does not possess, fish for, or retain any scallops if the vessel does not have a general category scallop permit, and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2008	[1] 2009
Full-time	35	42
Part-time	14	17
Occasional	3	3

[1] If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS allocations will be: Full-time—37; part-time—15, occasional—3.

(i) Limited access vessels that lawfully use more open area DAS in the 2008 fishing year than specified in this section shall have the DAS used in excess of the 2008 allocation specified in this paragraph (b)(4) deducted from their 2009 open area DAS allocation specified in paragraph (b)(2) of this section.

(ii) [Reserved]

(5) *Additional open area DAS.* If a TAC for yellowtail flounder specified in § 648.85(c) is harvested for an Access Area specified in § 648.59(b) through (d), a scallop vessel with remaining trips in the affected Access Area shall be allocated additional open area DAS according to the calculations specified in paragraphs (b)(5)(i) through (iii) of this section.

(i) For each remaining complete trip in the Nantucket Lightship Access Area, a full-time and part-time vessel may fish an additional 7.7 DAS in open areas and an occasional vessel may fish an additional 3.2 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder bycatch TAC closure, the vessel will be allocated 3.85 DAS (half of 7.7 DAS).

(ii) For each remaining complete trip in Closed Area II, a full-time and part-time vessel may fish an additional 7.9 DAS in open areas and an occasional vessel may fish an additional 3.3 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused Closed Area II broken trip compensation trip(s), as specified in § 648.60(c), when Closed Area II closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000 lb (4,082 kg) Closed Area II compensation trip (half of the possession limit) at the time of a Closed Area II yellowtail flounder bycatch TAC closure, the vessel will be allocated 3.95 DAS (half of 7.9 DAS).

(6) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted.

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS, the DAS allocations and Access Area trip allocations from the most recent fishing year shall remain in effect for the next fishing year. The Council may also recommend adjustments to DAS allocations through a framework action at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS,

not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(e) *Accrual of DAS*. All DAS fished shall be charged to the nearest minute. A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (g)(1) of this section shall be charged at a reduced rate as specified in paragraph (g)(1) of this section.

(f) *Good Samaritan credit*. Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(g) *DAS set-asides*—(1) *DAS set-aside for observer coverage*. As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS shall be set-aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage is 118 DAS for the 2008 fishing year, and 141 DAS for the 2009 fishing year. If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS set-aside for observer coverage will be 124 DAS. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research*. As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research is 235 DAS for the 2008 fishing year, and 282 DAS for the 2009 fishing year. If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS set-aside for research shall be 241 DAS. Vessels participating in approved research shall be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS shall be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or shall be added to a participating vessel's open area DAS allocation, as appropriate.

(h) *Annual Individual fishing quotas*—(1) *IFQ restriction*. For each fishing year of the IFQ program, a vessel issued an IFQ scallop permit may only harvest and land the total amount of scallop meats allocated in accordance with this subpart. Unless otherwise specified in this part, a vessel allocated scallop IFQ may not exceed the possession limits specified in § 648.52 on any trip.

(2) *Calculation of IFQ*. The total allowable catch allocated to IFQ scallop vessels, and the total allowable catch allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(3)(ii) and (iii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *Individual fishing quota.* The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraphs (h)(2)(ii) of this section, multiplied by the TAC allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as specified in paragraphs (a)(3)(ii) and (iii) of this section.

(ii) *Contribution factor.* An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in paragraphs (h)(2)(ii)(A) through (C) of this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in § 648.4(a)(2)(ii)(E), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

(A) *Best year determination.* An eligible IFQ scallop vessel's highest scallop landings in any scallop fishing year that the vessel was issued a general category scallop permit between March 1, 2000, and November 1, 2004, shall be determined using NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. If a dealer reported more than 400 lb (181.4 kg) of scallops landed on a trip, only 400 lb (181.4 kg) will be credited for that trip toward the best year calculation. For dealer reports that indicate clearly that the landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel shall be used to calculate meat-weight, up to a maximum of 400 lb (181.4 kg) per trip.

(B) *Years active.* For each eligible IFQ scallop vessel, the total number of scallop fishing years during the period March 1, 2000, through November 1, 2004, in which the vessel had a general category scallop permit and landed at least 1 lb (0.45 kg) of scallop meats, or in-shell scallops, shall be counted as active years based on NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004.

(C) *Index to determine contribution factor.* For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(*1*) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(*2*) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in § 648.53(a)(2) and the method of calculating the IFQ provided in § 648.53(h).

Years active	Index factor
1	0.75
2	0.875
3	1.0
4	1.125
5	1.25

(D) *Contribution factor example.* If a vessel landed 48,550 lb (22,022 kg) of scallops in its best year, and was active in the general category scallop fishery for 5 years, the vessel's contribution factor is equal to 60,687 lb (27,527 kg) (48,550 lb (22,022 kg * 1.25).

(iii) *Contribution percentage.* A vessel's contribution percentage will be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. The sum of the contribution factors shall be determined when all IFQ scallop vessels are identified. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg) /4.18 million lb (1,896 mt) = 1.45 percent).

(iv) *Vessel IFQ Example.* Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with a TAC allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent * 2.5 million lb (1,134 mt)).

(3) *IFQ ownership restrictions*—(i) *IFQ scallop vessel IFQ cap.* (A) Unless otherwise specified in paragraph (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued

more than 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(B) A vessel may be initially issued more than 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section. A vessel that is allocated an IFQ that exceeds 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section in accordance with this paragraph (h)(3)(i)(B), may not transfer IFQ to that vessel, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 2-percent ownership restriction being exceeded.

(ii) *IFQ ownership cap.* (A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(B) Vessel owners who were initially issued a 2008 IFQ scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(ii)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

(C) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(iii) *Limited access scallop vessels that have been issued an IFQ scallop permit.* The IFQ scallop vessel IFQ cap and IFQ ownership cap specified in this paragraph (h)(3) do not apply to limited access scallop vessels that are also issued a limited access general category scallop permit because such vessels are already subject to an ownership limitation, as specified in § 648.4(a)(2)(i)(M).

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ fish harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h), shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting his/her own fee for all of his/her IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year.

(i) *Cost recovery fee determination.* The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

(ii) *Fee payment procedure.* On or about October 31 of each year, NMFS shall mail a cost recovery bill to each

IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS by January 1 of each year. Cost recovery payments shall be made electronically via the Federal web portal, *www.pay.gov*, or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS by January 1 of each year. If the cost recovery payment, as determined by NMFS, is not made by January 1, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless otherwise determined by the Regional Administrator.

(5) *Transferring IFQ*—(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may temporarily transfer one or more entire IFQs to or from another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) *Permanent IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer one or more entire IFQs permanently to or from another IFQ scallop vessel. A vessel permanently transferring its

IFQ to another vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. Any such transfer cannot be limited in duration and is permanent unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer entire IFQ allocations only. The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2 percent of the total allowable catch allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer or receive IFQ from another IFQ scallop vessel, either temporarily or permanently. A vessel permanently transferring its IFQ to another vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits.

(iv) *Application for an IFQ transfer.* The owner of vessels applying for a transfer IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ prior to the expiration of the fishing year for which the IFQ transfer, if approved, would be effective.

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 45 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to an enforcement proceeding; the transferor's or transferee's vessel is prohibited from fishing; the transfer will result in the transferee's vessel having an allocation that exceeds 2 percent of the total allowable catch allocated to IFQ scallop vessels;

the transfer will result in the transferee having ownership of general category scallop allocation that exceeds 5 percent of the total allowable catch allocated to IFQ scallop vessels; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

[73 FR 20123, Apr. 14, 2008, as amended at 73 FR 30804, May 29, 2008]

§ 648.54 State waters exemption.

(a) *Limited access scallop vessel exemption*—(1) *DAS requirements*. Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d) through (g) of this section, and the notification requirements of § 648.10(e).

(2) *Gear and possession limit restrictions*. Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(b) under paragraph (a) of this section, and that has complied with the notification requirements of § 648.10(e), is also exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2), and the possession restrictions specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section.

(b) *LAGC scallop vessel gear and possession limit restrictions*. Any vessel issued an LAGC scallop permit is exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1), and (e)(2), and the applicable possession limits specified in § 648.52, while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) *State eligibility for exemption*. (1) A state may be eligible for the state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(3) Prior to Amendment 11 to the FMP, Maine, New Hampshire, and Massachusetts were determined by the Regional Administrator to have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. States must resubmit information describing their scallop fishery conservation programs so that the Regional Administrator can determine if such states continue to have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. In addition, these states must immediately notify the Regional Administrator of any changes in their respective scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to eliminate the exemption for that state. The Regional Administrator may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. In such case, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

(d) *Notification requirements*. Vessels fishing under the exemptions provided by paragraph(s) (a)(1) and/or (a)(2) of this section must notify the Regional

Administrator in accordance with the provisions of § 648.10(e).

(e) *Restriction on fishing in the EEZ.* A vessel fishing under a state waters exemption may not fish in the EEZ during the time in which it is fishing under the state waters exemption, as declared under the notification requirements of this section.

(f) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership, or upon notification through VMS by the participating vessel's owner.

(g) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a) and/or (b) of this section remains subject to all other requirements of this part.

[69 FR 35215, June 23, 2004, as amended at 71 FR 33227, June 8, 2006; 73 FR 20128, Apr. 14, 2008]

§ 648.55 Framework adjustments to management measures.

(a) Biennially, or upon a request from the Council, the Regional Administrator shall provide the Council with information on the status of the scallop resource. Within 60 days of receipt of that information, the Council PDT shall assess the condition of the scallop resource to determine the adequacy of the management measures to achieve scallop resource conservation objectives. Based on this information, the PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. Based on this information and analysis, the Council shall initiate a framework adjustment to establish or revise total allowable catch, DAS allocations, rotational area management programs, percentage allocations for limited access general category vessels in Sea Scallop Access Areas, scallop possession limits, or other measures to achieve FMP objectives and limit fishing mortality. The Council's development of an area rotation program shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and reopened areas; monitoring through resource surveys; and re-opening criteria. Rotational Closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.

(b) The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted. If the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the FEDERAL REGISTER with an effective date on or before March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing year shall continue, beginning March 1 of each fishing year.

(c) In the SAFE Report, the Scallop PDT shall review and evaluate the existing management measures to determine if the measures are achieving the FMP objectives and OY from the scallop resource as a whole. In doing so, the PDT shall consider the effects of any closed areas, either temporary, indefinite, or permanent, on the ability of the FMP to achieve OY and prevent overfishing on a continuing basis, as required by National Standard 1 of the Magnuson-Stevens Act. If the existing management measures are deemed insufficient to achieve FMP objectives and/or are not expected to achieve OY and prevent overfishing on a continuing basis, the PDT shall recommend to the Council appropriate measures and alternatives that will meet FMP objectives, achieve OY, and prevent overfishing on a continuing basis. When making the status determination in the SAFE Report, the PDT shall calculate the stock biomass and fishing mortality for the entire unit stock and consider all sources of scallop mortality to compare with the minimum biomass and maximum fishing mortality thresholds.

(d) In order to assure that OY is achieved and overfishing is prevented, on a continuing basis, the PDT shall recommend management measures necessary to achieve optimum yield-

per-recruit from the exploitable components of the resource (*e.g.*, those components available for harvest in the upcoming fishing years), taking into account at least the following factors:

(1) Differential fishing mortality rates for the various spatial components of the resource;

(2) Overall yields from the portions of the scallop resource available to the fishery;

(3) Outlook for phasing in and out closed or controlled access areas under the Area Rotation Program; and

(4) Potential adverse impacts on EFH.

(e) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must include measures to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

(1) Total allowable catch and DAS changes;

(2) Shell height;

(3) Offloading window reinstatement;

(4) Effort monitoring;

(5) Data reporting;

(6) Trip limits;

(7) Gear restrictions;

(8) Permitting restrictions;

(9) Crew limits;

(10) Small mesh line;

(11) Onboard observers;

(12) Modifications to the overfishing definition;

(13) VMS Demarcation Line for DAS monitoring;

(14) DAS allocations by gear type;

(15) Temporary leasing of scallop DAS requiring full public hearings;

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch;

(17) Aquaculture enhancement measures and closures;

(18) Closed areas to increase the size of scallops caught;

(19) Modifications to the opening dates of closed areas;

(20) Size and configuration of rotational management areas;

(21) Controlled access seasons to minimize bycatch and maximize yield;

(22) Area-specific trip allocations;

(23) TAC specifications and seasons following re-opening;

(24) Limits on number of area closures;

(25) TAC or DAS set-asides for funding research;

(26) Priorities for scallop-related research that is funded by a TAC or DAS set-aside;

(27) Finfish TACs for controlled access areas;

(28) Finfish possession limits;

(29) Sea sampling frequency;

(30) Area-specific gear limits and specifications;

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;

(32) Specifications for IFQs for limited access general category vessels;

(33) Revisions to the cost recovery program for IFQs;

(34) Development of general category fishing industry sectors and fishing cooperatives;

(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;

(36) VMS requirements; and

(37) Any other management measures currently included in the FMP.

(f) The Council must select an alternative that will achieve OY and prevent overfishing on a continuing basis, and which is consistent with other applicable law. If the Council fails to act or does not recommend an approvable

alternative, the Regional Administrator may select one of the alternatives developed and recommended by the PDT, which would achieve OY and prevent overfishing on a continuing basis and is consistent with applicable law, and shall implement such alternative pursuant to the Administrative Procedure Act.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under § 600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi^2 (6,993 km^2), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels.

(2) Fixed gear location reporting and plotting requirements.

(3) Standards of operation when gear conflict occurs.

(4) Fixed gear marking and setting practices.

(5) Gear restrictions for specific areas (including time and area closures).

(6) VMS.

(7) Restrictions on the maximum number of fishing vessels or amount of gear.

(8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures.

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not effect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action shall be published as a final rule in the FEDERAL REGISTER; or

(3) The Regional Administrator does not concur, the Council shall be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under § 305(c) of the Magnuson-Stevens Act.

[69 FR 35215, June 23, 2004, as amended at 69 FR 63474, Nov. 2, 2004; 71 FR 33228, June 8, 2006; 72 FR 32559, June 13, 2007; 73 FR 20128, Apr. 14, 2008]

§ 648.56 Scallop research.

(a) Annually, the Council and NMFS shall prepare and issue a Request for Proposals (RFP) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in §§ 648.53(b)(3) and 648.60(e).

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives; the relationship of the proposed research to scallop research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, utilize DAS set-aside for research, or take additional trips into Access Areas. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Upon completion of scallop research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

§ 648.57 Sea scallop area rotation program.

An area rotation program is established for the scallop fishery, which may include areas closed to scallop fishing defined in § 648.58, and/or Sea Scallop Access Areas defined in § 648.59, subject to the Sea Scallop Area Access program requirements specified in § 648.60. Areas not defined as Rotational Closed Areas, Sea Scallop Access Areas, EFH Closed Areas, or areas closed to scallop fishing under other FMPs, are open to scallop fishing as governed by the other management measures and restrictions in this part. The Council's development of area rotation programs is subject to the framework adjustment process specified in § 648.55, including the Area Rotation Program factors included in

§ 648.55(a). The percentage of the total allowable catch for each Sea Scallop Access Area that is allocated to limited access scallop vessels and limited access general category scallop vessels shall be specified in § 648.59 through the framework adjustment process specified in § 648.55.

[73 FR 20129, Apr. 14, 2008]

§ 648.58 Rotational Closed Areas.

(a) *Hudson Canyon Closed Area*. No vessel may fish for scallops in, or possess or land scallops from, the area known as the Hudson Canyon Closed Area. No vessel may possess scallops in the Hudson Canyon Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Hudson Canyon Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′ N.	73°10′ W.
H2	39°30′ N.	72°30′ W.
H3	38°30′ N.	73°30′ W.
H4	38°50′ N.	73°30′ W.
H5	38°50′ N.	73°42′ W.
H1	39°30′ N.	73°10′ W.

(b) *Delmarva Closed Area*. No vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (b) of this section. The Delmarva Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10′ N.	74°50′ W.
DMV2	38°10′ N.	74°00′ W.
DMV3	37°15′ N.	74°00′ W.
DMV4	37°15′ N.	74°50′ W.
DMV1	38°10′ N.	74°50′ W.

(c) *Transiting*. No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) and (b) of this section unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas.

(d) *Vessels fishing for species other than scallops*. A vessel may fish for species other than scallops within the closed areas specified in paragraphs (a) and (b) of this section as allowed in this part, provided the vessel does not fish for, catch, or retain scallops or intend to fish for, catch, or retain scallops. Declaration through VMS that the vessel is fishing in the general category scallop fishery is deemed to be an intent to fish for, catch, or retain scallops.

[71 FR 33228, June 8, 2006, as amended by 73 FR 30807, May 29, 2008]

§ 648.59 Sea Scallop Access Areas.

(a) *Delmarva Sea Scallop Access Area*. (1) From March 1, 2009, through February 28, 2010, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(2) The Delmarva Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10′ N.	74°50′ W.
DMV2	38°10′ N.	74°00′ W.
DMV3	37°15′ N.	74°00′ W.
DMV4	37°15′ N.	74°50′ W.
DMV1	38°10′ N.	74°50′ W.

(3) *Number of trips*.—(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(i), or unless the vessel is taking a compensation trip for a prior Delmarva Access Area trip that was terminated early, as specified in

§ 648.60(c). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (a)(5)(i). The 2009 Delmarva Access Area scallop quota for limited access scallop vessels is 5,529,000 lb (2,508 mt), unless reduced per § 648.60(a)(3)(i)(E)(*3*).

(ii) *LAGC scallop vessels*. (A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (a)(3)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (a)(3)(ii)(B) of this section. LAGC vessels will be allocated 291,000 lb (132 mt), which is 5 percent of the 2009 Delmarva Access Area TAC.

(B) Based on the TAC specified in paragraph (a)(3)(ii)(A) of this section, LAGC scallop vessels shall be allocated 728 trips to the Delmarva Access Area, unless reduced per § 648.60(a)(3)(i)(E)(*3*). The Regional Administrator shall notify all LAGC scallop vessels of the date when 728 trips have been, or are projected to be, taken. Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(b) *Closed Area I Access Area*. This area shall be managed on a 3-year cycle, with a 1-year closure, followed by a 2-year Area Access Program, as follows:

(1) Through February 28, 2007, and every third fishing year thereafter (*i.e.*, March 1, 2009, through February 28, 2010, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section.

(2) Beginning March 1, 2007, through February 28, 2009, and for every 2-year period, based on the fishing year, after the year-long closure described in paragraph (b)(1) of this section (*i.e.*, March 1, 2010 through February 29, 2012, etc.), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIA1	41°26′ N.	68°30′ W.
CAIA2	41°09′ N.	68°30′ W.
CAIA3	41°4.54′ N.	69°0.9′ W.
CAIA1	41°26′ N.	68°30′ W.

(4) *Season*. A vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Sea Scallop Access Area, described in paragraph (b)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area I Sea Scallop Access Area is open to scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is

taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (b)(5)(i).

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The Closed Area I Access Area shall be closed in the 2008 and 2009 fishing years.

(B) The Closed Area I Access Area shall be closed in fishing years 2008 and 2009. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2008 fishing year. Except as provided in paragraph (b)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4), the date on which the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) *Closed Area II Access Area.* This area shall be managed on a 3-year cycle, based on fishing years, with a 1-year closure, followed by a 2-year Area Access Program as follows:

(1) From March 1, 2007, through February 29, 2008, and every third fishing year thereafter, (i.e., March 1, 2010, through February 28, 2011, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, may not fish for, possess, or land scallops in or from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section, unless transiting pursuant to paragraph (f) of this section.

(2) Through February 28, 2007, and for every 2-year period after the year-long closure described in paragraph (c)(1) of this section (i.e., March 1, 2008, through February 28, 2010, etc.) and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from, the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Closed Area II Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIIA1	41°00′ N.	67°20′ W.
CAIIA2	41°00′ N.	66°35.8′ W.
CAIIA3	41°18.6′ N.	66°24.8′ W.
CAIIA4	41°30′ N.	66°34.8′ W.
CAIIA5	41°30′ N.	67°20′ W.
CAIIA1	41°00′ N.	67°20′ W.

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). The 2009 Closed Area II Access Area scallop quota for limited access scallop vessels is 5,626,666 lb (2,553 mt).

(ii) *LAGC scallop vessels*. (A) The percentage of the total Closed Area II Access Area TAC specified to be allocated to LAGC scallop vessels shall be specified in this paragraph (c)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The Closed Area II Access Area shall be closed in fishing year 2008, and LAGC vessels will be allocated zero percent of the 2009 Closed Area II Access Area TAC.

(B) The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) *Nantucket Lightship Access Area*. (1) From March 1, 2008, through February 28, 2009, and every third fishing year thereafter (*i.e.*, March 1, 2011, through February 29, 2012, 2014, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section.

(2) Through February 29, 2008, and for every 2-year period, based on fishing years, after each the year-long closure described in paragraph (d)(1) of this section (i.e., March 1, 2009, through February 28, 2011, etc.) and subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from, the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLSA1	40°50′ N.	69°00′ W.
NLSA2	40°30′ N.	69°00′ W.
NLSA3	40°30′ N.	69°14.5′ W.
NLSA4	40°50′ N.	69°29.5′ W.

Point	Latitude	Longitude
NLAA1	40°50′ N.	69°00′ W.

(4) *Season*. A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, except during the period June 15 through January 31 of each year the Nantucket Lightship Access Area is open to scallop fishing, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The 2008 Nantucket Lightship Access Area scallop quota for limited access scallop vessels is 5,068,250 lb (2,293 mt).

(ii) *LAGC scallop vessels*. (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (d)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. LAGC vessels shall be allocated 266,750 lb (121 mt) in fishing year 2008, which is 5 percent of the 2008 Nantucket Lightship Access Area TAC. The Nantucket Lightship Access Area shall be closed in fishing year 2009.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels shall be allocated 667 trips to the Nantucket Lightship Access Area in fishing year 2008. The Regional Administrator shall notify all LAGC scallop vessels of the date when the 667 trips have been, or are projected to be, taken. Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) *Elephant Trunk Sea Scallop Access Area*. (1) From March 1, 2007, through February 29, 2012, and subject to the seasonal restrictions specified in paragraph (e)(3) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (e)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(2) The Elephant Trunk Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1	38°50′ N.	74°20′ W.
ETAA2	38°10′ N.	74°20′ W.
ETAA3	38°10′ N.	73°30′ W.
ETAA4	38°50′ N.	73°30′ W.
ETAA1	38°50′ N.	74°20′ W.

(3) *Season*. A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea

Scallop Access Area, described in paragraph (e)(2) of this section, from September 1 through October 31 of each year the Elephant Turnk Access Area is open to scallop fishing as a Sea Scallop Access Area, unless transiting pursuant to paragraph (f) of this section.

(4) *Number of trips*— (i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Sea Scallop Access Area between March 1, 2007, and February 29, 2008, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *LAGC scallop vessels*. (A) The percentage of the Elephant Trunk Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC vessels shall be allocated 1,067,000 lb (484 mt) in fishing year 2008, which is 5 percent of the 2008 Elephant Trunk Access Area TAC. LAGC vessels shall be allocated 785,700 lb (356 mt) in fishing year 2009, which is 5 percent of the 2009 Elephant Trunk Access Area TAC. The 2009 general category TAC may be reduced per § 648.60(a)(3)(i)(E)(*2*).

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section LAGC vessels shall be allocated a total of 2,668 trips in the Elephant Trunk Access Area in fishing year 2008 and 1,964 trips in fishing year 2009. The fishing year 2009 general category trip allocation may be reduced per § 648.60(a)(3)(i)(E)(*2*). The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken. An LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared LAGC scallop trip once the Regional Administrator has provided notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4), of the date that the allocated number of trips for the applicable fishing year have been taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(f) *Transiting*. A sea scallop vessel that has not declared a trip into the Sea Scallop Area Access Program may enter the Sea Scallop Access Areas described in paragraphs (a), (b), (d), and (e), of this section, and possess scallops not caught in the Sea Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed in accordance with § 648.23(b). A scallop vessel that has declared a trip into the Sea Scallop Area Access Program may transit a Scallop Access Area while steaming to or from another Scallop Access Area, provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Access Area, as described in paragraph (c) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed in accordance with § 648.23(b).

[71 FR 33228, June 8, 2006, as amended at 72 FR 72629, Dec. 21, 2007; 73 FR 30807, May 29, 2008; 73 FR 30808, May 29, 2008; 73 FR 54736, Sept. 23, 2008]

§ 648.60 Sea scallop area access program requirements.

(a) A limited access scallop vessel may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9), and (b) through (f) of this section. An LAGC scallop vessel may fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel

complies with the requirements specified in paragraph (g) of this section.

(1) *VMS*. Each vessel participating in the Sea Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4) and vessel notification requirements specified in § 648.11(g) for observer deployment.

(3) *Number of Sea Scallop Access Area trips*.—(i) *Limited access vessel trips*. (A) Except as provided in paragraph (c) of this section, and unless the number of trips is adjusted for the Elephant Trunk Access Area or the Delmarva Access Area as specified in paragraph (a)(3)(i)(F) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, been allocated a compensation trip pursuant to paragraph (c) of this section, or unless the Elephant Trunk Access Area trip allocations are adjusted as specified in § 648.60(a)(3)(i)(F). If, during the interim period between March 1, 2008, and the implementation of the limited access Access Area trip allocations specified in this section, a limited access vessel takes a 2008 Closed Area I Access Area trip, one ETAA trip will be deducted from the vessel's 2009 allocation as specified in this section.

(B) *Full-time scallop vessels*. In the 2008 fishing year, a full-time scallop vessel may take four trips in the Elephant Trunk Access Area and one trip in the Nantucket Lightship Access Area. In the 2009 fishing year, a full-time scallop vessel may take three trips in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section), one trip in the Closed Area II Access Area, and one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section).

(C) *Part-time scallop vessels*. In the 2008 fishing year, a part-time scallop vessel may take one trip in the Nantucket Lightship Access Area and one trip in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section); or two trips in the Elephant Trunk Access Area. In the 2009 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Up to two trips in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section); up to one trip in Closed Area II; and up to one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(E) of this section).

(D) *Occasional scallop vessels*. In the 2008 fishing year, an occasional scallop vessel may take one trip in the Nantucket Lightship Access Area or one trip in the Elephant Trunk Access Area. In the 2009 fishing year, an occasional scallop vessel may take one trip in the Closed Area II Access Area or one trip in the Elephant Trunk Access Area (unless adjusted per paragraph (a)(3)(i)(F) of this section) or one trip in the Delmarva Access Area (unless adjusted per paragraph (a)(3)(i)(E) of this section).

(E) *Procedure for adjusting the number of 2009 fishing year trips in the Elephant Trunk and Delmarva Access Areas*. (*1*) The Regional Administrator shall reduce the number of 2009 Elephant Trunk Access Area trips or Delmarva Access Area trips using the tables in paragraphs (a)(3)(i)(F)(*2*) and (*3*) of this section, respectively, provided that updated exploitable biomass projections are available with sufficient time to announce such an adjustment through publication in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, on or about December 1, 2008. In addition, if an updated estimate of overall F exceeds 0.29 in 2008, then Elephant Trunk Access Area trip allocations shall be reduced consistent with reductions as required in the table

in paragraph (a)(3)(i)(F)(*2*) of this section under exploitable biomass estimates of 20,000–29,000 mt. If both the exploitable biomass and F thresholds are exceeded, the allocation level shall be established using the exploitable biomass adjustment schedule. If information is not available in time for NMFS to announce an adjustment in the FEDERAL REGISTER on or about December 1, 2008, no adjustment may be made. The exploitable biomass estimate necessary for any adjustment of the 2009 Elephant Trunk Access Area or Delmarva Access Area trip allocations shall be based on all available scientific surveys of scallops within the Elephant Trunk Access Area or Delmarva Access Area. Survey data must be used only if they are available with sufficient time for review and incorporation in the exploitable biomass estimate and they are determined to be scientifically sound. If no other surveys are available, the annual NOAA scallop resource survey shall be used to estimate exploitable scallop biomass for the Elephant Trunk Access Area.

(*2*) *Table of Elephant Trunk Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels*. If the exploitable biomass estimate is between 20,000 and 29,999 mt, part-time vessels shall be authorized to take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the Nantucket Lightship Access Area at the normal possession limit as specified at § 648.60(a)(5); and occasional vessels may take one trip in the Elephant Trunk Access Area or one trip in the Nantucket Lightship Access Area with a normal possession limit of 7,500 lb (3,402 kg) as specified at § 648.60(a)(5). The following table specifies the adjustments that shall be made through the procedure required in paragraph (a)(3)(i)(F)(*1*) of this section under various biomass estimates and adjusted 2009 TAC estimates:

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC (mt)	Adjusted 2009 observer set-aside TAC (mt)
30,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment.
20,000–29,999	2, 1*, 1**	1473	108.86	54.43.
10,000–19,000	1, 0, 0	982	72.57	36.29.
Less than 10,000	0, 0, 0	491	36.29	18.15.

* Part-time vessels may take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the NLCA with a possession limit of 18,000 lb (8,165 kg).

** Occasional vessels may take 1 trip in the Nantucket Lightship Access Area or 1 trip in the Elephant Trunk Access Area.

(*3*) *Table of Delmarva Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels*. The following table specifies the required adjustments that shall be made through the procedure specified in paragraph (a)(3)(i)(F)(*1*) of this section under various biomass estimates and adjusted 2009 target TAC estimates:

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC	Adjusted 2009 observer set-aside TAC
10,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment.
Less than 10,000	0, 0, 0	0	0	0.

(ii) *One-for-one area access trip exchanges*. (A) If the total number of trips allocated to a vessel into all Sea Scallop Access Areas combined is more than one, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for another vessel's unutilized trips into another Sea Scallop Access Area. One-for-one exchanges may be made only between vessels with the same permit category. For example, a full-time vessel may not exchange trips with a part-time vessel and vice versa. Vessel owners must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Trip exchange

forms are available by request from the Regional Administrator. Each vessel owner involved in an exchange is required to submit a completed Trip Exchange Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(B) Limited access scallop vessels involved in an exchange of Closed Area II and/or Nantucket Lightship Closed Area Access Area trips for the 2006 fishing year, and Elephant Trunk Access Area trips for the 2007 fishing year shall be subject to a reduction of the vessels' allocated trips so that the total number of allocated Elephant Trunk Access Area trips between two vessels that were involved in such an exchange shall be six for full-time vessels and four for part-time vessels in the 2007 fishing year. Reductions will be applied equally to both vessels' resulting Elephant Trunk Access Area allocation for the 2007 fishing year after the exchange is taken into account, unless the vessel giving Elephant Trunk Access Area trips to another vessel has one or zero Elephant Trunk Access Area trips remaining after the exchange. In such a case, the vessel that received the Elephant Trunk Access Area trips will be subject to a reduction of up to four Elephant Trunk Access Area trips.

(C) Limited access scallop vessels involved in an exchange of Closed Area II and/or Nantucket Lightship Closed Area Access Area trips for the 2006 fishing year, and Elephant Trunk Access Area trips for the 2007 fishing year shall be subject to a reduction of the vessels' allocated trips so that the total number of allocated Elephant Trunk Access Area trips between two vessels that were involved in such an exchange shall be six for full-time vessels and four for part-time vessels in the 2007 fishing year. Reductions will be applied equally to both vessels' resulting Elephant Trunk Access Area allocation for the 2007 fishing year after the exchange is taken into account, unless the vessel giving Elephant Trunk Access Area trips to another vessel has one or zero Elephant Trunk Access Area trips remaining after the exchange. In such a case, the vessel that received the Elephant Trunk Access Area trips will be subject to a reduction of up to four Elephant Trunk Access Area trips.

(iii) *Limited Access Vessel trips*. (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, has been allocated a compensation trip pursuant to paragraph (c) of this section.

(B) *Full-time scallop vessels*. In the 2007 fishing year, a full-time scallop vessel may take one trip in the Closed Area I Access Area, one trip in the Nantucket Lightship Access Area, and three trips in the Elephant Trunk Access Area.

(C) *Part-time scallop vessels*. In the 2007 fishing year, a part-time scallop vessel may take one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; or one trip in the Closed Area I Access Area and one trip in the Elephant Trunk Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Elephant Trunk Access Area; or two trips in the Elephant Trunk Access Area.

(D) *Occasional scallop vessels*. An occasional scallop vessel may take one trip in the 2007 fishing year into any of the Access Areas described in § 648.59 that is open during the specified fishing years.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Sea Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Sea Scallop Access Area more than once per trip. A vessel on a Sea Scallop Access Area trip may not enter or be in another Sea Scallop Access Area on the same trip except such vessel may transit another Sea Scallop Access Area provided its gear is stowed in accordance with § 648.23(b).

(i) *Reallocation of trips into open areas.* If the yellowtail flounder TAC allocated for a Scallop Access Area specified in § 648.59(b) through (d) has been harvested and such area has been closed, a vessel with trips remaining to be taken in such Access Areas may fish the remaining DAS associated with the unused trip(s) in Open Areas, up to the maximum DAS specified in § 648.53(b)(4)(i) through (iii).

(ii) [Reserved]

(5) *Possession and landing limits*—(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in paragraphs (a)(5)(i)(A) and (B) of this section. No vessel declared into the Elephant Trunk Access Area as described in § 648.59(e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

(A) Up to 18,000 lb (8,165 kg) of shucked scallops for full-time and part-time scallop vessels.

(B) Up to 7,500 lb (3,402 kg) of shucked scallops for occasional scallop vessels.

(ii) *NE multispecies possession limits and yellowtail flounder TAC.* Subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4), and provided the vessel has been issued a scallop multispecies possession limit permit as specified in § 648.4(a)(1)(ii), after declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b) through (d), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(2), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section.

(A) *Atlantic cod.* Such vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(B) *Haddock.* Such vessels may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section, except that such vessels are prohibited from possessing or landing haddock from January 1 through June 30.

(C) *Yellowtail flounder*—(*1*) *Yellowtail flounder TACs.* Such vessel may catch yellowtail flounder provided the Regional Administrator has not issued a notice that the scallop fishery portion of the TACs specified in § 648.85(c) for the Closed Area I, Closed Area II, and Nantucket Lightship Access Scallop Areas have been harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the scallop fishery portion of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any Access Area. Upon notification in the FEDERAL REGISTER that a TAC has been or is projected to be harvested, scallop vessels are prohibited from declaring and initiating a trip within the Access Area(s), where the TAC applies, for the remainder of the fishing year. The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

(*2*) *SNE/MA yellowtail flounder possession limit.* Such vessels fishing within the Nantucket Lightship Access Area

described in § 648.59(d) may fish for, possess, and land yellowtail flounder up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section, except that such vessels may not fish for, possess, or land more than 250 lb (113.6 kg) per trip of yellowtail flounder between June 15 and June 30, provided the Regional Administrator has not issued a notice that the scallop fishery portion of the yellowtail flounder TAC as specified in § 648.85(c)(i) has been harvested.

(*3*) *GB yellowtail flounder possession limit*. After declaring a trip into and fishing within the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 1,000 lb (453.6 kg) per trip of yellowtail flounder subject to the amount of other NE multispecies onboard, provided that the Regional Administrator has not issued a notice that the yellowtail flounder TAC specified in § 648.85(c) has been harvested. If the yellowtail flounder TAC established for the Eastern U.S./Canada Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(*3*), scallop vessels are prohibited from harvesting, possessing, or landing yellowtail flounder in or from the Closed Area I and Closed Area II Access Areas.

(iii) [Reserved]

(iv) *Scallop possession limits*. Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in paragraphs (a)(5)(i)(A) and (B) of this section. No vessel declared into the Elephant Trunk Access Area as described in § 648.59(e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

(A) Up to 18,000 lb (8,165 kg) shucked scallops for full-time and part-time scallop vessels.

(B) Up to 7,500 lb (3,402 kg) shucked scallop for occasional scallop vessels.

(6) *Gear restrictions*. (*i*) The minimum ring size for dredge gear used by a vessel fishing on a Sea Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Sea Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(*ii*) Vessels fishing in the Closed Area I, Closed Area II, and Nantucket Lightship Closed Area Sea Scallop Access Areas described in § 648.59(b) through (d) are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

(7) *Transiting*. While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed in accordance with § 648.23(b), unless there is a compelling safety reason to be transiting the area without gear stowed.

(8) *Off-loading restrictions*. The vessel may not offload its catch from a Sea Scallop Access Area trip at more than one location per trip.

(9) *Reporting*. The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24-hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

(i) Total pounds of scallop meats kept, total number of tows, and the Fishing Vessel Trip Report log page number.

(ii) Total pounds of yellowtail flounder kept and total pounds of yellowtail flounder discarded.

(b) [Reserved]

(c) *Compensation for Sea Scallop Access Area trips terminated early*. If a Sea Scallop Access Area trip is terminated before catching the allowed possession limit, the vessel may be authorized to fish an additional trip in the same Sea Scallop Access Area based on the following conditions and requirements.

(1) The vessel owner/operator has determined that the Sea Scallop Access

Area trip should be terminated early for reasons deemed appropriate by the operator of the vessel;

(2) The amount of scallops landed by the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section;

(3) The vessel owner/operator must report the termination of the trip prior to leaving the Sea Scallop Access Area by VMS email messaging, with the following information: Vessel name, vessel owner, vessel operator, time of trip termination, reason for terminating the trip (for NMFS recordkeeping purposes), expected date and time of return to port, and amount of scallops on board in pounds;

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the terminated trip; and

(5) The Regional Administrator shall authorize the vessel to take an additional trip and shall specify the amount of scallops that the vessel may land on such trip pursuant to the calculation specified in paragraph (c)(5)(i) of this section. Such authorization shall be made within 10 days of receipt of the formal written request for compensation.

(i) The amount of scallops that can be landed on an authorized additional compensation Sea Scallop Access Area trip shall equal the possession limit specified in paragraph (a)(5) of this section minus the amount of scallops landed on the terminated trip. For example, if the possession limit for a full-time vessel is 18,000 lb (8,165 kg) per trip, and the vessel lands 6,500 lb (2,948.4 kg) of scallops and requests compensation for the terminated trip, the possession limit for the additional trip is 11,500 lb (5,216.3 kg) or 18,000 lb (8,165 kg) minus 6,500 lb (2,948.4 kg)).

(ii) If a vessel is authorized more than one additional compensation trip into any Sea Scallop Access Area as the result of more than one terminated trip in the same Access Area, the possession limits for the authorized trips may be combined, provided the total possession limit on a combined additional compensation trip does not exceed the possession limit for a trip as specified in paragraph (a)(5) of this section. For example, a vessel that has two broken trips with corresponding additional compensation trip authorizations of 10,000 lb (4,536 kg) and 8,000 lb (3,629 kg) may combine the authorizations to allow one compensation trip with a possession limit of 18,000 lb (8,165 kg).

(iii) A vessel operator must comply with all notification requirements prior to taking an additional compensation trip, and for each such trip, must enter a trip identification number by entering the number in the VMS for each such trip. The trip identification number will be included in the Regional Administrator's authorization for each additional compensation trip. If a vessel operator is combining additional compensation trips, the trip identification numbers from each authorization must be entered into VMS.

(iv) *Unutilized 2005 Hudson Canyon compensation trips*. A vessel that terminated a 2005 Hudson Canyon Access Area trip shall be issued authorization to take an additional trip as compensation for the trip terminated early pursuant to paragraph (c)(5) of this section. Such additional trips may be taken at any time during the 2006 or 2007 fishing years, as specified in § 648.59(a)(3).

(v) *Additional compensation trip carryover*. If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates a Nantucket Lightship Access Area trip on December 10, 2006, must declare that it

is beginning its additional compensation trip during the first 60 days that the Access Area is open (June 15, 2007, through August 15, 2007). If an Access Area is not open in the subsequent fishing year, then the additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area II trip on December 10, 2006, may not carry its additional compensation trip into the 2007 fishing year because Closed Area II is not open during the 2007 fishing year, and must complete any compensation trip by January 31, 2007.

(d) *Possession limit to defray costs of observers*—(1) Observer set-aside limits by area—(i) Nantucket Lightship Access Area. For the 2008 fishing year, the observer set-asides for the Nantucket Lightship Access Area is 55,000 lb (25 mt).

(ii) *Closed Area II Access Area*. For the 2009 fishing year, the observer set-aside for the Closed Area II Access Area is 58,000 lb (26 mt).

(iii) *Elephant Trunk Access Area*. For the 2008 and 2009 fishing years, the observer set-aside for the Elephant Trunk Access Area is 222,000 lb (101 mt), and 162,000 lb (73 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iv) *Delmarva Access Area*. For the 2009 fishing year, the observer set-aside for the Delmarva Access Area is 60,000 lb (27 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(2) *Increase in the possession limit to defray the costs of observers*. The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Possession limits and/or number of trips to defray the costs of sea scallop research*—(1) Research set-aside limits and number of trips by area—(i) *Nantucket Lightship Access Area*. For the 2008 fishing year, the research set-aside for the Nantucket Lightship Access Area is 110,000 lb (50 mt).

(ii) *Closed Area II Access Area*. For the 2009 fishing year, the research set-aside for the Closed Area II Access Area is 116,000 lb (53 mt).

(iii) *Elephant Trunk Access Area*. For the 2008 and 2009 fishing years, the research set-aside for the Elephant Trunk Access Area is 440,000 lb (200 mt), and 324,000 lb (147 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iv) *Delmarva Access Area*. For the 2009 fishing year, the research set-aside for the Delmarva Access Area is 120,000 lb (54 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(2) *Increase of possession limit to defray the costs of sea scallop research*. The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to the amount specified in paragraph (e)(1) of this section.

(3) *Yellowtail flounder research TAC set-aside*. Vessels conducting research approved under the process described in § 648.56, and in the Access Areas specified in § 648.59(b) through (d) may harvest cumulative yellowtail flounder up to a total amount that equals 0.2 percent of the yellowtail flounder TACs established annually, according to the specification procedure described in § 648.85(a)(2), and subject to the possession limits specified in paragraph

(a)(5)(ii)(C) of this section. Once 0.2 percent of the yellowtail flounder TACs established according to the specification procedure described in § 648.85(a)(2) has been harvested by research vessels, research may no longer be authorized in the applicable Access Area.

(f) *VMS polling*. For the duration of the Sea Scallop Area Access Program, as described in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs of polling twice per hour.

(g) *General category scallop vessels*. (1) An LAGC scallop vessel, except a vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the LAGC Access Area fishery, may only fish in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the Sea Scallop Area Access program as specified in paragraph (a)(2) of this section is not subject to the restrictions and requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

(2) *Gear restrictions*. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (d) must fish with dredge gear only. The combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the Access Areas described in § 648.59(b) through (d) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *Scallop TAC*. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (e) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the scallop TAC specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) in the Access Area has been or is projected to be harvested. Upon a determination from the Regional Administrator that the scallop TAC for a specified Access Area, as specified in this paragraph (g)(3), has been, or is projected to be harvested, the Regional Administrator shall publish notification of this determination in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act. Once this determination has been made, and LAGC scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area.

(i) *Closed Area I Access Area*. 86,414 (38 mt) in 2007.

(ii) *Closed Area II Access Area*. 346,170 (157 mt) in 2006.

(iii) *Nantucket Lightship Access Area*. 230,780 lb (105 mt) in 2006, and 157,454 lb (71 mt) in 2007.

(iv) *Elephant Trunk Access Area*. 346,000 lb (157 mt) in 2007.

(v) *Possession Limits*—(A) *Scallops*. A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the general category Access Area fishery is prohibited from possessing scallops. A general category scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (e) may possess scallops up to the possession limit specified in § 648.52(b), subject to a limit on the total number of trips that can be taken by all such vessels into the Access Areas, as specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii). Upon a determination by the Regional Administrator that the total number of trips allowed for general category vessels have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the FEDERAL

REGISTER, in accordance with the Administrative Procedure Act, and general category vessels may no longer fish within the specified Access Area.

(B) *Other species.* Except for vessels issued a general category scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, general category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are prohibited from possessing any species of fish other than scallops.

(vi) *Elephant Trunk Access Area.* 346,000 lb (157 mt) in 2007.

(4) *Number of trips.* A general category scallop vessel may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(b) through (e) after the effective date of the notification published in the FEDERAL REGISTER, stating that the total number of trips specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been, or are projected to be, taken by general category scallop vessels.

[71 FR 33231, June 8, 2006, as amended at 72 FR 32559, June 13, 2007; 72 FR 72629, Dec. 21, 2007; 73 FR 20130, Apr. 14, 2008; 73 FR 30810, May 29, 2007]

§ 648.61 EFH closed areas.

Notwithstanding any other provision of this part, the following areas identified in paragraphs (a) through (e) of this section are closed to scallop fishing to protect EFH from adverse effects of scallop fishing (copies of charts depicting these areas are available from the Regional Administrator upon request):

(a) *Closed Area I EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area I EFH Closure. No vessel may possess scallops in the Closed Area I EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Closed Area I EFH Closure consists of two sections, defined by straight lines connecting the points in the order stated in the following table:

SECTION 1

Point	Latitude	Longitude
CAIE1	41°30′ N.	69°23′ W.
CAIE2	41°30′ N.	68°35′ W.
CAIE3	41°08′ N.	69°4.2′ W.
CAIE4	41°30′ N.	69°23′ W.

SECTION 2

Point	Latitude	Longitude
CAIE5	41°04.5′ N.	69°1.2′ W.
CAIE6	41°09′ N.	68°30′ W.
CAIE7	40°45′ N.	68°30′ W.
CAIE8	40°45′ N.	68°45′ W.
CAIE5	41°04.5′ N.	69°1.2′ W.

(b) *Closed Area II EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II EFH Closure. No vessel may possess scallops in the Closed Area II EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Closed Area II EFH Closure is defined by straight lines connecting the points in the order stated in the following table:

Point	Latitude	Longitude
CAIIE1	42°22′ N.	67°20′ W.[1]
CAIIE2	41°30′ N.	66°34.8′ W.[1]
CAIIE3	41°30′ N.	67°20′ W.
CAIIE1	42°22′ N.	67°20′ W.[1]

[1] The U.S/Canada Maritime Boundary

(c) *Nantucket Lightship Closed Area EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Closed Area EFH Closure. No vessel may possess scallops in the Nantucket Lightship Closed Area EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Nantucket Lightship Closed Area EFH Closure is defined by straight lines connecting the points in the order stated in the following table:

Point	Latitude	Longitude
NLSE1	40°50′ N.	70°20′ W.
NLSE2	40°50′ N.	69°29.5′ W.
NLSE3	40°30′ N.	69°14.5′ W.
NLSE4	40°30′ N.	69°00′ W.
NLSE5	40°20′ N.	69°00′ W.
NLSE6	40°20′ N.	70°20′ W.
NLSE1	40°50′ N.	70°20′ W.

(d) *Western Gulf of Maine EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Western Gulf of Maine EFH Closure. No vessel may possess scallops in the Western Gulf of Maine EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Western Gulf of Maine EFH Closure is defined by straight lines connecting the points in the order stated in the following table:

Point	Latitude	Longitude
WGOM1	43°15′ N.	70°15′ W.
WGOM2	43°15′ N.	69°55′ W.
WGOM3	42°15′ N.	69°55′ W.
WGOM4	42°15′ N.	70°15′ W.
WGOM1	43°15′ N.	70°15′ W.

(e) *Transiting.* A vessel may transit the area(s) specified in paragraphs (a), (c), and (d) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit the area specified in paragraph (b) of this section, in accordance with § 648.81(b)(2)(iv).

[70 FR 66798, Nov. 3, 2005]

§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.

(a) The NGOM scallop management area is the area north of 42(20' N. lat. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in § 648.80(a)(11). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in § 648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by all vessels issued LAGC scallop permits, including IFQ scallop permits, and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in paragraph (b) of this section. Scallop landings by IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(3) A vessel issued a NGOM or IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The total allowable catch and allocations as specified in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the total allowable catch and allocations specified in § 648.53(a).

(1) *NGOM TAC.* The TAC for the NGOM shall be 70,000 lb (31.8 mt) for both the 2008 and 2009 fishing years.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting NGOM scallop management area with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the FEDERAL REGISTER that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached. A vessel that has not been issued a Federal scallop permit that fishes exclusively

in state waters is not subject to the closure of the NGOM scallop management area.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10.

(d) *Gear restrictions.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have properly declared a trip under the scallop DAS program, the combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the NGOM scallop management area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

[73 FR 20131, Apr. 14, 2008 as amended at 73 FR 30811, May 29, 2008]

§ 648.63 General category Sectors and harvesting cooperatives.

(a) *Procedure for implementing Sector allocation proposals.* (1) Any person may submit a Sector allocation proposal for a group of LAGC scallop vessels to the Council, at least 1 year in advance of the start of the proposed sector, and request that the Sector be implemented through a framework procedure specified at § 648.55, in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation be initiated, the Council shall follow the framework adjustment provisions of § 648.55. Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector remain subject to the LAGC scallop vessel regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (c) of this section, and comply with the conditions and restrictions of this paragraph (b).

(1) *Participation.* (i) Only LAGC scallop vessels are eligible to form Sectors, and Sectors may choose which eligible permit holders to include or exclude in the sector, consistent with all applicable law. A Sector may establish additional criteria for determining its membership, provided such criteria are specified in the Sector's operations plan and are consistent with all applicable law. Any interested group that meets the eligibility criteria may submit a proposal for a Sector. To initiate the process of Sector creation, a group (two or more) of permit holders must agree to cooperate and submit a binding plan for management of that Sector's allocation of total allowable catch. Vessels that do not choose to participate in a sector will fish under the IFQ program and remain in the non-sector scallop fishery.

(ii) Participation by incidental catch or NGOM scallop vessels in the Sector is subject to approval by the Council as part of the action that implements the Sector allocation, provided the details of such participation are specified in the Sector's operations plan. A Sector allocation may be harvested by non-Sector members, provided the Sector operations plan specifies that the Sector may authorize non-Sector vessels to harvest the Sector allocation. In this case, if the Sector is approved, the landings history of the participating non-Sector vessels may not be used in the calculation of future Sector shares and may not be used as scallop catch history for such vessels. The operations plan must specify how such participating non-Sector shall be subject to the rules of the Sector.

(iii) Once a vessel operator and/or vessel owner signs a binding contract to have his/her vessel participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(iv) Vessels that fish in the LAGC scallop fishery outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for IFQ used, or catch by the vessel, prior to implementation of the Sector.

(v) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(iii) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(vi) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the scallop regulations for non-Sector vessels specified under this part either for any period specified in the final decision of penalty or sanction.

(vii) If a pre-existing Sector accepts a new member, the percentage share brought to the Sector is based on that vessel's average qualification landings at the time it joins the Sector (*i.e.*, the vessel is treated as a ''Sector of one'' and a share based on the appropriate adjusted TACs is calculated). This new single-vessel-Sector share is added to the existing Sector. If a vessel leaves a Sector, that Sector's share is reduced by the individual vessel share the exiting vessel had when it joined the Sector.

(viii) A vessel may not be a member of more than one Sector. Once a vessel enters into a Sector, it cannot fish during that fishing year under the regulations that apply to the common pool. Additionally, vessels cannot shift from one Sector to another during a single fishing year. Therefore, if a vessel leaves a Sector for any reason, it cannot participate in the general category scallop fishery during the remainder of that fishing year

(2) *Allocation of TAC to Sectors*. (i) The Sector allocation shall be equal to a percentage share of the TAC allocation for IFQ scallop vessels specified in § 648.53(a), similar to a IFQ scallop vessel's IFQ as specified in § 648.53(h). The Sector's percentage share of the IFQ scallop fishery TAC catch shall not change, but the amount of allocation based on the percentage share will change based on the TAC specified in § 648.53(a).

(ii) *Sector share determination*. When a Sector proposal is submitted, NMFS shall verify the contribution percentage as specified in § 648.53(h)(2)(iii) for each vessel listed as a Sector member. The Sector's share shall be the sum of the participating vessels' contribution percentages.

(iii) A Sector shall not be allocated more than 20 percent of the TAC for IFQ vessels specified in § 648.53(a)(5)(ii) or (iii).

(3) Once a Sector's allocation is projected to be harvested, Sector operations will be terminated for the remainder of the fishing year.

(4) If a Sector's allocation is exceeded in a given fishing year, the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanction pursuant to 15 CFR part 904. If a Sector exceeds its allocation in more than one fishing year, the Sector's authorization to operate may be withdrawn.

(5) A vessel operator and/or vessel owner participating in a Sector is not subject to the limit on the vessel's catch based on the vessel's own IFQ or contribution percentage as defined in § 648.53(h)(2)(iii), provided the vessel is participating in the Sector and carries on board a Letter of Authorization to participate in the Sector and exempts the vessel from its IFQ limit and any other related measures. The Sector shall determine how the Sector's allocation will be divided between its participating vessels, regardless of whether the catch by a participating vessel exceeds that vessel's own IFQ.

(6) Each vessel operator and/or vessel owner fishing under an approved Sector must comply with all scallop management measures of this part and other applicable law, unless exempted under a Letter of Authorization, as specified in paragraph (b)(11) of this section. Each vessel and vessel operator and/or vessel owner participating in a Sector

must also comply with all applicable requirements and conditions of the Operations Plan specified in paragraph (c) of this section and the Letter of Authorization issued pursuant to paragraph (b)(11) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(7) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(8) It shall be the responsibility of each Sector to track its activity and internally enforce any provisions adopted through procedures established in the operations plan and agreed to through the Sector contract. Sector contracts should describe graduated sanctions, including grounds for expulsion of Sector member vessels. The Sector and participating Sector vessels shall be subject to NMFS enforcement action for violations of the regulations pertaining to Sectors and other regulations under 50 CFR part 648. Vessels operating within a Sector are responsible for judgments against the Sector. Sector operations plans shall specify how a Sector will monitor its landings to assure that Sector landings do not exceed the Sector allocation. At the end of the fishing year, NMFS shall evaluate landings using VMS and any other available information to determine whether a Sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan. If a Sector exceeds its TAC, the Sector may have its authorization as a Sector withdrawn by the Regional Administrator, after consultation with the Council, and may be subject to enforcement action.

(9) Permanent or temporary transfers of allocation between Sectors or between Sector and non-Sector participants is prohibited. For purposes of harvesting a Sector allocation only, vessels under contract to a Sector are assumed to be part of that Sector for the duration of that contract.

(10) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(11) If a Sector is approved as specified in paragraph (d)(3) of this section, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or owner for the participating Sector vessel. The Letter of Authorization shall authorize participation in the Sector operations and may exempt the participating vessel from the requirement that the vessel cannot exceed its own IFQ and related measures. The Letter of Authorization may include requirements and conditions deemed necessary to ensure effective administration of and compliance with the Sector's operations plan and the Sector's allocation.

(c) *Operations plans.* (1) A group that wants to form a Sector and receive an allocation must submit a legally binding operations plan to the Council and the Regional Administrator. The operations plan must be agreed upon and signed by all members of the Sector and, if approved, shall constitute a contract.

(2) The operations plan among all of the Sector members must have, at a minimum, the following components:

(i) A list of all participants;

(ii) A contract signed by all participants indicating their agreement to abide by the operations plan;

(iii) An entity name, address, phone number, and the name and contact information for a Sector representative (a manager or director) that NMFS can contact regarding Sector management issues;

(iv) A plan explaining how the Sector will harvest its allocation, including methods to inform NMFS of changes in those arrangements over the year;

(v) The original distribution of catch history of vessels in the Sector (maintaining vessel data confidentiality);

(vi) A plan detailing how the Sector will avoid exceeding its allocated TACs, including provisions for monitoring and enforcement of the Sector

regulations, and documenting all landings and discards;

(vii) Rules for entry to and exit from the Sector, including sanctions and procedures for removing members who do not comply with the operations plan;

(viii) Procedure for notifying NMFS if a member is no longer part of the Sector and the reason for leaving;

(ix) The process through which the operations plan can be amended by Sector members;

(x) If the Sector plans to authorize non-Sector vessels to harvest scallops allocated to the Sector, details of such arrangements must be described in the operations plan;

(xi) Any documents and analyses necessary to comply with the National Environmental Protection Act must be submitted to NMFS. The development of the analytical document is the responsibility of the applicants.

(xii) Any other information determined to be necessary and appropriate.

(d) *Sector review, approval, and revocation.* (1) A Sector shall submit its operations plan and any NEPA documents to the Regional Administrator and the Council no less than 1 year prior to the date that it wishes to begin operations under the Sector. The Council shall consider this plan in the course of the periodic framework adjustment or specification process and may, if approved, implement it through either of those processes. After Council approval of a Sector, the details of its operation shall be addressed between the Sector and NMFS, although the New England Fishery Management Council may review and provide comment on the proposed details.

(2) The Regional Administrator may withdraw approval of a Sector at any time if he/she, in consultation with the New England Fishery Management Council, determines that Sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a Sector shall be completed after notice and comment rulemaking, pursuant to the Administrative Procedure Act.

(3) A Sector is required to resubmit its operations plan to the Regional Administrator no later than July 1 of each year, whether or not the plan has changed. Once the submission documents specified under paragraphs (a)(1) and (c)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

[73 FR 20131, Apr. 14, 2008]

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

§ 648.70 Annual individual allocations.

(a) *General.* (1) Each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (i.e., October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.71. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in bushels and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on

or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.75(b).

(2) The Regional Administrator may, after publication of a fee notification in the FEDERAL REGISTER, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers*—(1) *Allocation percentage.* Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) *Review.* If the Regional Administrator determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

[61 FR 34968, July 3, 1996, as amended at 68 FR 69973, Dec. 16, 2003; 70 FR 2026, Jan. 12, 2005]

§ 648.71 Catch quotas.

(a) *Establishing quotas.* Beginning in 2005, the amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for a 3-year period by the Regional Administrator. The initial 3-year specification will be based on the most recent available survey and stock assessments for Atlantic surfclams and ocean quahogs. Subsequent 3-year specifications of the annual quotas will be accomplished in the third year of the quota period, unless the quotas are modified in the interim pursuant to § 648.71(b). The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 m bu (98.5 to 181 m L) per year. The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 m bu (213 to 319.4 m L).

(1) *Quota reports.* On an annual basis, MAFMC staff will produce an Atlantic surfclam and ocean quahog annual quota recommendation paper to the MAFMC based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a 3–year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for a 3–year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the OY.

(ii) Fishing mortality rates relative to the OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be

opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the FEDERAL REGISTER. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the FEDERAL REGISTER each year. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act and the objectives of the Atlantic Surfclam and Ocean Quahog FMP and other applicable law.

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3–year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the Council's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3–year period. Such modification shall be in effect for a period of 3 years from the year in which it is first implemented, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a 3–year period.

(c) *Annual quotas.* The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

[68 FR 69973, Dec. 16, 2003, as amended at 70 FR 2026, Jan. 12, 2005]

§ 648.72 Minimum surf clam size.

(a) *Minimum length.* The minimum length for surf clams is 4.75 inches (12.065 cm).

(b) *Determination of compliance.* No more than 50 surf clams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surf clams in any inspected cage of surf clams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(c) *Suspension.* Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-height standard, unless discard, catch, and survey data indicate that 30 percent of the surf clams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where the growth of individual surf clams has been reduced because of density dependent factors.

(d) *Measurement.* Length is measured at the longest dimension of the surf clam shell.

§ 648.73 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Assistant Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Assistant Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the ''Boston Foul Ground'' and located at 42°25′36″ N. lat., 70°35′00″ W. long., with a radius of 1 nautical mile in every direction from that point.

(2) *New York Bight*. The polluted area and waste disposal site known as the ''New York Bight'' and located at 40°25′04″ N. lat., 73°42′38″ W. long., and with a radius of 6 nm in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31′00″ N. lat., 73°43′38″ W. long., directly northward toward Atlantic Beach Light in New York to the limit of the state territorial waters of New York; and a line from the point on the arc at 40°19′48″ N. lat., 73°45′42″ W. long., to a point at the limit of the state territorial waters of New Jersey at 40°14′00″ N. lat., 73°55′42″ W. long.

(3) *106 Dumpsite*. The toxic industrial site known as the ''106 Dumpsite″ and located between 38°40′00″ and 39°00′00″ N. lat., and between 72°00′00″ and 72°30′00″ W. long.

(4) *Georges Bank*. The paralytic shellfish poisoning (PSP) contaminated area, which is located in Georges Bank, and is located east of 69° W. longitude, and south of 42°20′ N. latitude.

(b) *Areas closed because of small surf clams*. Areas may be closed because they contain small surf clams.

(1) *Closure*. The Assistant Administrator may close an area to surf clams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surf clams of which:

(i) Sixty percent or more are smaller than the minimum size (4.5 inches (11.43 cm)); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening*. The Assistant Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-height class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surf clams in the area.

(c) *Procedure*. (1) The Regional Administrator may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Assistant Administrator shall publish notification in the FEDERAL REGISTER of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the FEDERAL REGISTER. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the FEDERAL REGISTER. The Regional Administrator shall send notice of any action under this paragraph (c)(1) to each surf clam and ocean quahog processor and to each surf clam and ocean quahog permit holder.

(2) If the Regional Administrator determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the FEDERAL REGISTER, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin*—(1) *Maine mahogany quahog zone*. The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for paralytic shellfish poisoning. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding

these areas contact the State of Maine Division of Marine Resources at (207–624–6550).

(2) [Reserved]

[61 FR 34968, July 3, 1996, as amended at 62 FR 14649, Mar. 27, 1997; 62 FR 37156, July 11, 1997; 63 FR 27485, May 19, 1998; 64 FR 57594, Oct. 26, 1999; 70 FR 2026, Jan. 12, 2005]

§ 648.74 Shucking at sea.

(a) *Observers*. (1) The Regional Administrator may allow the shucking of surf clams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking.

(2) Any vessel owner may apply in writing to the Regional Administrator to shuck surf clams or ocean quahogs at sea. The application shall specify: Name and address of the applicant, permit number of the vessel, method of calculating the amount of surf clams or ocean quahogs harvested in the shell, vessel dimensions and accommodations, and length of fishing trip.

(3) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(4) Any observer shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(b) *Conversion factor*. (1) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surf clams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell.

(2) The Regional Administrator shall publish notification in the FEDERAL REGISTER specifying a conversion factor together with the data used in its calculation for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the FEDERAL REGISTER specifying the conversion factor.

(3) If the Regional Administrator makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surf clams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

§ 648.75 Cage identification.

Except as provided in § 648.76, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surf clams and ocean quahogs:

(a) *Tagging*. Before offloading, all cages that contain surfclams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage. A tag is required for every 60 ft^3 (1,700 L) of cage volume, or portion thereof. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by authorized law enforcement agents.

(b) *Issuance*. The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year, or he/she may specify, in the FEDERAL REGISTER, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.70(a). Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration*. Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return*. Tags that have been rendered null and void must be returned to the Regional Administrator, if possible.

(e) *Loss*. Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Administrator by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter,

the reported tags shall no longer be valid for use under this part.

(f) *Replacement*. Lost or stolen tags may be replaced by the Regional Administrator if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Administrator or a vendor with a written authorization from the Regional Administrator.

(g) *Transfer*. See § 648.70(b)(2).

(h) *Presumptions*. Surf clams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under § 648.75(b) or transferred under § 648.70(b).

[61 FR 34968, July 3, 1996, as amended at 63 FR 27485, May 19, 1998; 68 FR 69974, Dec. 16, 2003; 72 FR 51703, Sept. 11, 2007]

§ 648.76 Maine mahogany quahog zone.

(a) *Landing requirements*. (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.70 and 648.75. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally-permitted dealers for inspection by NMFS .

(b) *Quota monitoring and closures*—(1) *Catch quota*. (i) The annual quota for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bushels (35,150 hL). The quota may be revised annually within the range of 17,000 and 100,000 Maine bushels (5,975 and 35,150 hL) following the procedures set forth in § 648.71.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.70 shall be applied against the Maine mahogany quahog quota, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.70 will be counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the quota based on dealer reports and other available information and shall determine the date when the quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel*. The Council shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surf Clam and Ocean Quahog Committee of the Council, regarding revisions to the annual quota and other management measures.

[63 FR 27485, May 19, 1998]

§ 648.77 Framework adjustments to management measures.

(a) *Within season management action*. The Council, at any time, may initiate action to add or adjust management

measures within the Atlantic Surf Clam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process*. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels), description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set-aside quota for scientific research, VMS, OY range, suspension or adjustment of the surfclam minimum size limit, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs).

(2) *Council recommendation*. After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action*. If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule and published in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[64 FR 57594, Oct. 26, 1999, as amended at 68 FR 69974, Dec. 16, 2003; 73 FR 4753, Jan. 28, 2008]

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area.* The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
CII3	42°22′	67°20′ [2]

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
CII3	42°22′	67°20′ [1]
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The intersection of the Cape Cod, MA, coastline and 42°00′ N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate loran C bearings
CII3	42°22′	67°20′	(1)
SNE1	40°24′	65°43′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G12	(1)	70°00′
G11	40°50′	70°00′
NL1	40°50′	69°40′
NL2	40°18.7′	69°40′
NL3	40°22.7′	69°00′
	(2)	69°00′

[1] South facing shoreline of Cape Cod.
[2] Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels*—(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels*—(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) Number of nets. A day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

(*3*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags.* Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags.* Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(*1*) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(*2*) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be reissued.

(v) *Hook gear restrictions.* Unless otherwise specified in paragraph (a)(3)(v) of this section, vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′

INSHORE RESTRICTED ROLLER GEAR AREA—Continued

Point	N. lat.	W. long.
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM18	43°30′	([4])

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions*—(i) *Vessels using trawls*. Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(i), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine*. Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels*. When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*. Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm)

throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(*2*) *Net size requirements.* Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 150, counting the deployed net. Nets may not be longer than 300 ft (91.4 m).

(*3*) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(*4*) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(5) *Small Mesh Northern Shrimp Fishery Exemption.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch

(2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions*. A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area*. Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. lat.	W. long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA—Continued

Point	N. lat.	W. long.
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements*. (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the FEDERAL REGISTER.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh

multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section.

(ii) *Sea sampling*. The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review*. The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting*. (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Areas defined in paragraphs (a)(11) and (18) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Exemption allowing no incidental catch of regulated multispecies*. An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of incidental catch of regulated species, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as incidental catch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i), and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental catch standard could be modified for a stock

that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce incidental catch of regulated species. Notification of additions, deletions, or modifications will be made through issuance of a rule in the FEDERAL REGISTER.

(ii) *Exemption allowing incidental catch of regulated species.* An exemption may be added in an existing fishery that would allow vessels to retain and land regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Incidental catch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery.

(iv) Unless otherwise specified within the exempted fisheries authorized under this paragraph (a)(8), incidental catch is restricted, at a minimum, to the following:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise

prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d), butterfish, dogfish, herring, Atlantic mackerel, scup, squid, and red hake.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA I

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA II

Point	N. lat.	W. long.
SM13	43°05.6′	69°55′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM13	43°05.6′	69°55′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each

drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(3) or paragraph (a)(4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. lat.	W. long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
CI1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Scallop Dredge Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the

straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
G2	43°58′	67°22′
G1	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements*. (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the GOM Scallop Dredge Fishery Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(d) and (e).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area*. A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area*. Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements*. (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption*. Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements*. (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery*. Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl

Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(d) and (e). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[September 1 through November 20]

Point	N. lat.	W. long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 10	42°04.75′	70°16.95′
RF 11	42°00′	70°13.2′
RF 12	42°00′	70°24.1′
RF 13	42°07.85′	70°30.1′
RF 1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[November 21 through December 31]

Point	N. lat.	W. long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 1	42°14.05′	70°08.8′

(i) *Requirements*. (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake, subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake, butterfish, dogfish, herring, mackerel, scup, and squid.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive

gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling*. The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery*. Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N. lat.	W. long.
GRF1	43°15′	70°35.4′
GRF2	43°15′	70°00′
GRF3	43°25.2′	70°00′
GRF4	43°41.8′	69°20′
GRF5	43°58.8′	69°20′

(i) *Mesh requirements and possession restrictions*. (A) All nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake, butterfish, herring, mackerel, squid, and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications*. In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind

(chain, roller frame, or rockhopper). The drop chains must be a maximum of ⅜-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review*. On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(b), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition*. The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE GEORGES BANK EXEMPTION AREA

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1]The intersection of the shoreline and the U.S.-Canada Maritime Boundary

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate loran C bearings
G6	40°55.5′	66°38′	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G8	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G9	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12	.....	70°00′ [1]	

[1]Northward to its intersection with the shoreline of mainland Massachusetts.

(18) *Great South Channel Scallop Dredge Exemption Area*. Vessels issued a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the Great South Channel Scallop Dredge Exemption Area as defined under paragraph (a)(18)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (a)(18)(ii) of this section.

(i) *Area Definition*. The Great South Channel Scallop Dredge Exemption Area is defined by the straight lines

connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

GREAT SOUTH CHANNEL SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
GSC 1	42°06 [min]	69°40 [min]
GSC 2	41°30 [min]	69°10 [min]
GSC 3	41°30 [min]	69°23 [min]
GSC 4	40°50 [min]	68°49.2 [min]
GSC 5	40°50 [min]	69°29.46 [min]
GSC 6	41°10 [min]	69°50 [min]
GSC 7	41°10 [min]	70°00 [min]
GSC 8	41°35 [min]	70°00 [min]
GSC 9	41°35 [min]	69°40 [min]

(ii) *Requirements*. (A) A vessel fishing in the Great South Channel Scallop Dredge Exemption Area specified in this paragraph (a)(18) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the Great South Channel Scallop Dredge Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) GSC SNE/GB Yellowtail Flounder Peak Spawning Closure. No vessel that qualifies under this exemption, as defined in this paragraph (a)(18), may fish for or possess Atlantic sea scallops in the part of the Great South Channel Scallop Dredge Exemption Area that lies within the SNE and GB yellowtail flounder stock areas (statistical areas 525 and 526) between April 1 and June 30, as defined by the straight lines connecting the following points in the order stated below.

GSC SNE/GB YELLOWTAIL FLOUNDER SPAWNING CLOSURE

Point	N. lat.	W. long.
YTA 1	41°20 [min]	70°00 [min]
YTA 2	41°20 [min]	69°50 [min]
YTA 3	41°10 [min]	69°50 [min]
YTA 4	41°10 [min]	69°30 [min]
YTA 5	41°00 [min]	69°30 [min]
YTA 6	41°00 [min]	68°57.58 [min]
YTA 7	40°50 [min]	68°49.20 [min]
YTA 8	40°50 [min]	69°29.46 [min]
YTA 9	41°10 [min]	69°50 [min]
YTA 10	41°10 [min]	70°00 [min]

GSC SNE/GB YELLOWTAIL FLOUNDER SPAWNING CLOSURE—Continued

Point	N. lat.	W. long.
YTA 11	(1)	70°00 [min]

(1) Intersection of south-facing coastline of Nantucket, MA, and 70°00 [min] W. Long.

(D) GSC CC/GOM Yellowtail Flounder Peak Spawning Closure. No vessel that qualifies under this exemption, as defined in this paragraph (a)(18), may fish for or possess Atlantic sea scallops in the part of the Great South Channel Scallop Dredge Exemption Area that lies within the CC/GOM yellowtail flounder stock area (statistical area 521) between June 1 and June 30 of each year, as defined by the straight lines connecting the following points in the order stated below.

GSC CC/GOM YELLOWTAIL FLOUNDER SPAWNING CLOSURE

Point	N. lat.	W. long.
YTB 1	41°33.05 [min]	70°00 [min]
YTB 2	41°20 [min]	70°00 [min]
YTB 3	41°20 [min]	69°50 [min]
YTB 4	41°10 [min]	69°50 [min]
YTB 5	41°10 [min]	69°30 [min]
YTB 6	41°00 [min]	69°30 [min]
YTB 7	41°00 [min]	68°57.58 [min]
YTB 8	41°30 [min]	69°23 [min]
YTB 9	41°30 [min]	69°10 [min]
YTB 10	42°06 [min]	69°40 [min]
YTB 11	41°35 [min]	69°40 [min]
YTB 12	41°35 [min]	70°00 [min]

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition*. The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00′ W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00′ W. long. line.

(2) *Gear restrictions*—(i) *Vessels using trawls*. Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b),

except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to

be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively; or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions*—(i) *Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE

Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements*. (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must comply with the minimum mesh size specified under § 648.91(c)(1)(i).

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area*. Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements*. (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has an Letter of Authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area*. Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements*. (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption*. A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area*. A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east-northeastly through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements*. (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition*. The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

Point	N. lat.	W. long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		70°00′ [1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area*. Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop

permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE Scallop Dredge Exemption Area when not under a NE multispecies DAS, provided the vessel complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south, and east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc1	(1)	73°00′
Sc2	40°00′	73°00′
Sc3	40°00′	71°40′
Sc4	39°50′	71°40′
Sc5	39°50′	70°00′
Sc6	(2)	70°00′
Sc7	(3)	70°00′
Sc8	(4)	70°00′

[1] South facing shoreline of Long Island, NY.
[2] South facing shoreline of Nantucket, MA.
[3] North facing shoreline of Nantucket, MA.
[4] South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc9	41°00′	(1)
Sc10	41°00′	71°40′
Sc11	(2)	71°40′

[1] East facing shoreline of the south fork of Long Island, NY.
[2] South facing shoreline of RI.

(ii) *Exemption program requirements.* (A) A vessel fishing in the SNE Scallop Dredge Exemption Area may not fish for, posses on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The minimum mesh size used in the twine top of scallop dredges must be 10 in (25.4 cm).

(D) The exemption does not apply to the Nantucket Lightship Closed Area specified under § 648.81(c).

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition.* The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm)

diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hook gear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using dehookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. Vessels fishing with a valid NE multispecies limited access Handgear permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels*—(1) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(*2*) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area.* The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) *Midwater trawl gear exempted fishery.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, and in the area described in

§ 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with the following restrictions:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20′ N. lat.; and

(ii) The vessel is issued a letter of authorization for a minimum of 7 days. The vessel can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time.

(3) The vessel carries a NMFS-approved sea sampler/observer, if requested by the Regional Administrator;

(4) The vessel does not fish for, possess or land NE multispecies, except that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land haddock or other regulated species consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated NE multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, which are on a declared herring trip must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act.

(e) *Purse seine gear exempted fishery*. Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator and complies with the following:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(ii) The vessel must carry a NMFS-approved sea sampler/observer, if requested to do so by the Regional Administrator;

(3) The vessel is issued a letter of authorization for a minimum of 7 days, and cancels it only as instructed by the Regional Administrator. The vessel can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time; and

(4) The vessel does not fish for, possess, or land NE multispecies, except that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, as defined in § 648.2, may

possess and land haddock or other regulated species consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act.

(f) *Mesh measurements*—(1) *Gillnets.* Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of 10 consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size is measured by a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) Pair trawl prohibition. No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling, except as authorized under paragraph (d) of this section.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies*—(i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (*i.e.*, outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (*i.e.*, both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes*—(i) *Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Harbor Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board,

unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption*. Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by this section (for a particular fishing year).

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

[69 FR 22951, Apr. 27, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 648.81 NE multispecies closed areas and measures to protect EFH.

(a) *Closed Area I*. (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

CLOSED AREA I

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d),

provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board gear capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of § 648.85(b).

(vi) Fishing for scallops within the Closed Area I Access Area defined in § 648.59(b)(3) during the season specified in § 648.59(b)(4), and pursuant to the provisions specified in § 648.60.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

CLOSED AREA II

Point	N. lat.	W. long.
C1I1	41°00′	67°20′
C1I2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ [1]
C1I3	42°22′	67°20′ [1]

CLOSED AREA II—Continued

Point	N. lat.	W. long.
C1I1	41°00′	67°20′ [1]

[1] The U.S.-Canada Maritime Boundary.

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(1)(v) of this section;

(iii) Fishing in the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program as specified at § 648.85(b)(3)(ii) or (b)(8)(ii), respectively; or

(iv) Transiting the area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

(v) Fishing for scallops within the Closed Area II Access Area defined in § 648.59(c)(3), during the season specified in § 648.59(c)(4), and pursuant to the provisions specified in § 648.60.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. lat.	W. long.
G10	40°50′	69°00′
CN1	40°20′	69°00′

NANTUCKET LIGHTSHIP CLOSED AREA—Continued

Point	N. lat.	W. long.
CN2	40°20′	70°20′
CN3	40°5O′	70°20′
G10	40°50′	69°00′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (a)(2) of this section; or

(ii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area during the period specified by the letter of authorization; or

(iii) Fishing with or using dredge gear designed and used to take surfclams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies.

(iv) Fishing for scallops within the Nantucket Lightship Access Area defined in § 648.59(d)(3), during the season specified in § 648.59(d)(4), and pursuant to the provisions specified in § 648.60.

(d) *Cashes Ledge Closure Area*. (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(2) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

CASHES LEDGE CLOSURE AREA

Point	N. lat.	W. long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section.

(e) *Western GOM Closure Area*. (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (e)(2) and (i) of this section:

WESTERN GOM CLOSURE AREA [1]

Point	N. lat.	W. long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

[1] A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section consistent with the requirements specified under § 648.80(a)(5).

(f) *GOM Rolling Closure Areas*. (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2)

and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I

[March 1–March 31]

Point	N. lat.	W. long.
GM3	42°00′	(1)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM23	42°30′	70°00′

1 Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1)(ii) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM13	43°00′	68°30′
GM10	43°00′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 New Hampshire shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (f)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM23	42°30′	70°00′
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM18	43°30′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. lat.	W. long.
GM9	42°30′	(1)
GM23	42°30′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32′ or (2)
GM20	44°00′	67°21′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

1 Massachusetts shoreline.
2 U.S.-Canada maritime boundary.
3 Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V

[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(g) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

GEORGES BANK SEASONAL CLOSURE AREA

[May 1–May 31]

Point	N. lat.	W. long.
GB1	42°00′	(1)
GB2	42°00′	68°30′
GB3	42°20′	68°30′
GB4	42°20′	67°20′
GB5	41°30′	67°20′
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
GB6	40°30′	68°30′
GB7	40°30′	69°00′
G10	40°50′	69°00′
GB8	40°50′	69°30′
GB9	41°00′	69°30′
GB10	41°00′	70°00′
G12	(1)	70° 00′

[1] Northward to its intersection with the shoreline of mainland MA.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels;

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS, and provided that the vessel complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h); or when lawfully fishing in the Scallop Dredge Fishery Exemption Areas, as described in paragraphs (a)(11) and (18) of this section.

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph

(h)(1) of this section apply to the Western GOM Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. lat.	W. long.
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′
WGM5	42°15′	70°00′
WGM6	43°15′	70°00′
WGM4	43°15′	70°15′

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

CASHES LEDGE HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CLH1	43°01′	69°03′
CLH2	43°01′	68°52′
CLH3	42°45′	68°52′
CLH4	42°45′	69°03′
CLH1	43°01′	69°03′

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. lat.	W. long.
JB1	43°40′	68°50′
JB2	43°40′	68°40′
JB3	43°20′	68°40′
JB4	43°20′	68°50′
JB1	43°40′	68°50′

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CI1	41°30′	69°23′

CLOSED AREA I—NORTH HABITAT CLOSURE AREA—Continued

Point	N. lat.	W. long.
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04′	69°01′
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIH3	40°55′	68°53′
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°55′	68°53′

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in this paragraph (h)(1) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIIH1	42°10′	67°20′
CIIH2	42°10′	67°9.3′
CIIH3	42°00′	67°0.5′
CIIH4	42°00′	67°10′
CIIH5	41°50′	67°10′
CIIH6	41°50′	67°20′
CIIH1	42°10′	67°20′

(vi) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSED AREA

Point	N. lat.	W. long.
NLH1	41°10′	70°00′
NLH2	41°10′	69°50′
NLH3	40°50′	69°30′
NLH4	40°20′	69°30′
NLH5	40°20′	70°00′
NLH1	41°10′	70°00′

(2) [Reserved]

(i) *Transiting.* A vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, and the EFH

Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(2) of this section, in accordance with paragraph (b)(2)(iv) of this section.

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W.
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2′ W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ W.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119		

(2) *Restricted Period*—(i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II*. (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70		

(2) *Restricted period*—(i) *Mobile gear*. From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III*. (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.

Point	Latitude	Longitude
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70 to 192	39°29.75′ N.	72°09.8′ W.

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV*. (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206 to 119	40°07.80′ N.	70°09.20′ W.
Offshore Boundary		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39°56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119 to 206	40°02.75′ N.	70°16.1′ W.

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) [Reserved]

[69 FR 22964, Apr. 27, 2004, as amended at 69 FR 35223, June 23, 2004; 69 FR 63480, Nov. 2, 2004; 69 FR 67798, Nov. 19, 2004; 70 FR 76426, Dec. 27, 2005; 71 FR 51784, Aug. 31, 2006; 72 FR 73279, Dec. 27, 2007]

§ 648.82 Effort-control program for NE multispecies limited access vessels.

(a) Except as provided in §§ 648.17 and 648.82(a)(2), a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this

section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (*e.g.*, for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) *Permit categories*. All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (b)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (d) of this section.

(1) *Individual DAS category*. This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(2) *Hook Gear category*. To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category*. To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the

vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(4) *Large Mesh Individual DAS category*. This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in § 648.80(a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii).

(5) *Small Vessel category*—(i) *DAS allocation*. A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(*2*), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved]

(6) *Handgear A category*. A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (136.1 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline*. For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies

Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6–year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (b)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(2) *Correction of used DAS baseline.* (i) A vessel's used DAS baseline, as determined under paragraph (c)(1) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (d) of this section.

(d) *DAS categories and allocations.* For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, ''NE multispecies DAS'' refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(2) *Category B DAS*. Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (d)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(A) *Restrictions on use*. Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(6). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(6)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (i.e., when fishing in an approved SAP as described in § 648.85(b)). Vessels that are required by the Monkfish Fishery Management Plan to utilize a NE multispecies DAS, as specified under § 648.92(b)(2), may not elect to use a NE multispecies Category B DAS to satisfy that requirement.

(B) *Calculation*. Unless determined otherwise, as specified under paragraph (d)(4) of this section, Regular B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use*. Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation*. Unless determined otherwise, as specified under paragraph (d)(4) of this section, Reserve B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) *Category C DAS*—(i) *Restriction on use*. Category C DAS are reserved and may not be fished.

(ii) *Calculation*. Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations*. The schedule of reductions in NE multispecies DAS shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

(A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that

overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the FEDERAL REGISTER, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(e) *Accrual of DAS.* (1) When a vessel is participating in the DAS program, as required by the regulations, DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10.

(2) *Differential DAS.* For a NE multispecies DAS vessel that intends to fish some or all of its trip, or fishes, some or all of its trip other than for transiting purposes, under a Category A DAS in the GOM Differential DAS Area, as defined in paragraph (e)(2)(i)(A) of this section, or in the SNE Differential DAS Area, as defined in paragraph (e)(2)(i)(B) of this section, with the exception of Day gillnet vessels, which accrue DAS in accordance with paragraph (j)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the differential DAS rate described in paragraph (e)(2)(iii) of this section, and be subject to the restrictions defined in this paragraph (e).

(i) *Differential DAS Areas.* (A) *GOM Differential DAS Area.* The GOM Differential DAS Area is defined by straight lines connecting the following points in the order stated:

GOM DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
GMD1	43°30′	Intersection with Maine Coastline.
GMD2	43°30′	69°30′.
GMD3	43°00′	69°30′.
GMD4	43°00′	69°55′ eastern boundary, WGOM Closed Area.
GMD5	42°30′	69°55′.
GMD6	42°30″	69°30′.
GMD7	41°30′	69°30′.

GOM DIFFERENTIAL DAS AREA—Continued

Point	N. lat.	W. long.
GMD8	41°30′	70°00′.
GMD9	North to intersection with Cape Cod, Massachusetts, coast and 70°00′ W.	

(B) SNE Differential DAS Area. The SNE Differential DAS Area is defined by straight lines connecting the following points in the order stated:

SNE DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
SNED1	41°05′	71°45′
SNED2	41°05′	70°00′
SNED3	41°00′	70°00′
SNED4	41°00′	69°30′
SNED5	40°50′	69°30′
SNED6	40°50′	70°20′
SNED7	40°40′	70°20′
SNED8	40°40′	70°30′
SNED9	40°30′	72°30′
SNED10	40°10′	73°00′
SNED11	40°00′	73°15′
SNED12	40°00′	73°40′
SNED13	40°15′	73°40′
SNED14	40°30′	73°00′
SNED15	40°55′	71°45′
SNED16	41°05′	71°45′

(ii) *Declaration.* With the exception of vessels fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii)(A), a NE multispecies DAS vessel that intends to fish, or fishes under a Category A DAS in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in paragraph (e)(2)(i) of this section, must, prior to leaving the dock, declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific differential DAS area the vessel will fish in on that trip. A DAS vessel that fishes in the Eastern U.S./Canada Area and intends to fish, or fishes, subsequently in the GOM Differential DAS Area or the SNE Differential DAS Area under Category A DAS Area must declare its intention to do so through its VMS prior to leaving the Eastern U.S./Canada Area, as specified in § 648.85(a)(3)(ii)(A)(*3*).

(iii) *Differential DAS counting*—(A) *Differential DAS counting when fishing in the GOM Differential DAS Area.* For a NE multispecies vessel that intends to fish, or fishes for some or all of its trip other than for transiting purposes under a Category A DAS in the GOM

Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to1 for the entire trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel that has not declared its intent to fish in the GOM Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the GOM Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area, and the vessel declares immediately upon entering the GOM Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2 to1 for the entire trip.

(B) *Differential DAS counting when fishing in the SNE Differential DAS Area.* For a NE multispecies DAS vessel that intends to fish or fishes some or all of its trip other than for transiting purposes under a Category A DAS in the SNE Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the duration of the time spent in the SNE Differential DAS Area, as determined from VMS positional data. A vessel that has not declared its intent to fish in the SNE Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the SNE Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area and the vessel declares immediately upon entering the SNE Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip. If the Regional Administrator requires the use of the DAS call-in, as described under § 648.10(b)(2)(iv), a vessel that fishes any portion of its trip in the SNE Differential DAS Area will be charged DAS at the rate of 2 to1 for the entire trip.

(iv) *Restrictions.* A NE multispecies vessel fishing under a Category A DAS in one of the Differential DAS Areas defined in paragraph (e)(2)(i) of this section, under the restrictions of paragraph (e)(2) of this section and under the restrictions of one or more of the Special Management Programs under § 648.85 must comply with the most restrictive DAS counting, trip limits, and reporting requirements, specified in this paragraph (e)(2) and in § 648.85, under the pertinent Special Management Program.

(v) *Transiting.* A vessel may transit the GOM Differential DAS Area and the SNE Differential DAS Area, as defined in paragraph (e)(2)(i) of this section, provided the gear is stowed in accordance with the provisions of § 648.23(b).

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), and that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can legally land. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in one of the Differential DAS Areas, defined in (e)(2)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (e)(2)(iii) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a),

DAS counting will begin and end according to the DAS accounting rules specified in § 648.10(b)(2)(iii).

(f) *Good Samaritan credit.* See § 648.53(g).

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (b)(5) or (b)(6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(i) [Reserved]

(j) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(2).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes

with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(3) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, when not subject to differential DAS counting as specified under paragraph (e)(2) of this section, shall accrue 15 hr of DAS for each trip of more than 3 hr, but less than or equal to 15 hr. Such vessel shall accrue actual DAS time at sea for trips less than or equal to 3 hr, or more than 15 hr.

(C) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the GOM Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(A) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours used for any trip of 0–3 hr in duration, and for any trip of greater than 7.5 hr. For such vessels fishing from 3 to 7.5 hr duration, vessels will be charged a full 15 hr. For example, a Day gillnet vessel fishing in the GOM Differential Area for 8 actual hr would be charged 16 hours of DAS, or if fishing for 5 actual hr would be charged 15 hr of DAS.

(D) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the SNE Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(B) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours that are in the SNE Differential DAS Area that are from 0–3 hr in duration and greater than 7.5 hr. For hours in the SNE Differential DAS Area that are over 3 hr and less than or equal to 7.5 hr duration, a vessel shall be charged a full 15 hr. For a Day gillnet vessel that fishes both inside and outside of the SNE Differential DAS Area on the same trip, time fished outside the area shall accrue on the basis of actual time, unless otherwise specified in this paragraph (j)(1)(iii). A Day gillnet vessel fishing inside and outside of the SNE Differential DAS Area on the same trip shall not accrue less DAS for the entire trip than would a Day gillnet vessel fishing the same amount of time outside of the SNE Differential DAS Area for the entire trip (accruing DAS as specified under paragraph (j)(1)(iii)(B) of this section).

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) *NE Multispecies DAS Leasing Program*—(1) *Program description.* Eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.* (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until the close of business on March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of Permit History.* DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing.* In a fishing year, a Lessor or Lessee vessel may not sublease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's current allocation of Category A DAS.

(v) *History of leased DAS use and landings.* Unless otherwise specified in this paragraph (k)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for

leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in which such leases were approved by NMFS.

(vi) *Monkfish Category C, D, F, G and H vessels.* A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G, or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (d)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel.* A Lessor vessel only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the Lessor vessel. A Lessor vessel may only lease DAS to a Lessee vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004, unless otherwise modified according to paragraph (k)(4)(xi) of this section.

(x) *Leasing by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(xi) *One-time downgrade of DAS Leasing Program baseline.* For the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (k)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.* To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

(B) *Duration and applicability of one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement, or through a DAS transfer unless otherwise specified in this paragraph (k)(4)(xi)(B). Once the permit is transferred to another vessel, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade, unless otherwise specified. Once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit. The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(E) and (F), or any other provision respectively. For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS

Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid.

(l) *DAS Transfer Program.* Except for vessels fishing under a sector allocation as specified in § 648.87, or a vessel that acted as a lessee or lessor in the DAS Leasing Program transaction, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS. Upon approval of the DAS transfer, all history associated with the transferred NE multispecies DAS (moratorium right history, DAS use history, and catch history) shall be associated with the permit rights of the transferee. Neither the individual permit history elements, nor total history associated with the transferred DAS may be retained by the transferor.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules. A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(B) of this section.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits exist, i.e, those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

(iv) For the purpose of calculating the DAS conservation tax as described in this paragraph (l), the applicants must specify which DAS (the transferor's DAS or the transferee's DAS) are subject to the DAS reduction. NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, shall be reduced by 20 percent upon transfer. Category C DAS, as defined under paragraph (d)(3) of this section, shall be reduced by 90 percent upon transfer.

(v) In any particular fishing year, a vessel may not execute a DAS transfer as a transferor if it previously participated in the DAS Leasing Program as either a lessee or a lessor, as described under paragraph (k) of this section. A vessel may participate in DAS lease transaction (as a lessee or a lessor) and submit an application for a DAS transfer (as a transferor) during the same fishing year, but the transfer, if approved, would not be effective until the beginning of the following fishing year. Other combinations of activities under the DAS Leasing and DAS Transfer programs are permissible during the same fishing year (i.e., act as a transferee, or act as transferor and subsequently conduct a DAS lease).

(vi) NE multispecies DAS associated with a Confirmation of Permit History may not be transferred.

(vii) *Transfer by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation as specified under § 648.87(b), may not transfer DAS

to another vessel that is not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(viii) A vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

(ix) A vessel with a DAS allocation resulting from a DAS Transfer in accordance with this paragraph (l) may acquire, through leasing, up to the sum of the DAS allocations for the 2001 fishing year, associated with the transferred and original DAS (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit), in accordance with the restrictions of paragraph (k) of this section.

(2) *Application to transfer DAS*. Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements*. An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. The application must be accompanied by verification, in writing, that the seller/transferor has requested cancellation of all state and Federal fishing permits from the appropriate agency or agencies.

(ii) *Approval of transfer application*. Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application*. The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

(m) *DAS credit for standing by entangled whales*. Limited access vessels fishing under the DAS program that report and stand by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(1) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(2) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(3) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(4) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status, date of first communication with the USCG, and date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

[69 FR 22969, Apr. 27, 2004, as amended at 69 FR 67798, Nov. 19, 2004; 69 FR 70923, Dec. 8, 2004; 70 FR 21942, Apr. 28, 2005; 70 FR 31340, June 1, 2005; 70 FR 76427, Dec. 27, 2005; 71 FR 62186, Oct. 23, 2006; 72 FR 73279, Dec. 27, 2007]

§ 648.83 Multispecies minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(3) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (Inches)
Cod	22 (55.9 cm)
Haddock	18 (45.7 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(4) Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land haddock and other regulated species that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in §§ 648.86(a)(3) and 648.86(k). Such fish may not be sold for human consumption.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

[69 FR 22974, Apr. 27, 2004, as amended at 71 FR 46876, Aug. 15, 2006; 72 FR 11276, Mar. 12, 2007]

EFFECTIVE DATE NOTE: At 72 FR 44981, Aug. 10, 2007, § 648.83 was amended by suspending paragraph (a)(1) and adding paragraph (a)(3), effective Aug. 10, 2007, through Feb. 6, 2008. At 72 FR 64000, Nov. 14, 2007, the effective date was extended through Aug. 10, 2008.

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern

or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

[69 FR 22974, Apr. 27, 2004]

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding*. No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section. These restrictions do not preclude fishing under an approved Special Access Program specified under paragraph (b) of this section.

(1) *U.S./Canada Management Areas*. A NE multispecies DAS vessel that meets the requirements of paragraph (a)(3) of this section, may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area*. The Western U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

WESTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 1	42°20′	68°50′
USCA 2	39°50′	68°50′
USCA 3	39°50′	66°40′
USCA 4	40°40′	66°40′
USCA 5	40°40′	66°50′
USCA 6	40°50′	66°50′
USCA 7	40°50′	67°00′
USCA 8	41°00′	67°00′
USCA 9	41°00′	67°20′
USCA 10	41°10′	67°20′
USCA 11	41°10′	67°40′
USCA 12	42°20′	67°40′
USCA 1	42°20′	68°50′

(ii) *Eastern U.S./Canada Area*. The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

EASTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 12	42°20′	67°40′
USCA 11	41°10′	67°40′
USCA 10	41°10′	67°20′
USCA 9	41°00′	67°20′
USCA 8	41°00′	67°00′
USCA 7	41°50′	67°00′
USCA 6	41°50′	66°50′
USCA 5	41°40′	66°50′
USCA 4	41°40′	66°40′
USCA 15	40°30′	66°40′
USCA 14	40°30′	65°44.3′
USCA 13	42°20′	67°18.4′
USCA 12	42°20′	67°40′

(2) *TAC allocation*. (i) Except for the 2004 fishing year, the amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (E) of this section.

(A) By June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) By July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) By August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) By October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of

the U.S./Canada Management Area resources for GB cod, haddock, and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year. NMFS shall review the Council's recommendations and shall publish in the FEDERAL REGISTER the proposed TACs and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and publish notification of the approved TACs and responses to public comments in the FEDERAL REGISTER. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(E) For fishing year 2004, the amount of GB cod, haddock and yellowtail flounder TAC that may be harvested under this section will be published in the preamble of the proposed and final rules for Amendment 13.

(ii) *Adjustments to TACs*. Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas*. Any NE multispecies vessel may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. Vessels other than NE multispecies vessels may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement*. A NE multispecies DAS vessel in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(ii) *Declaration*. To fish in the U.S./Canada Management Area under a groundfish DAS, a NE multispecies DAS vessel, prior to leaving the dock, must declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or which specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area the vessel will fish in, and comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Areas.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting, trip limits, and reporting requirements for the areas fished for the entire trip, and provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. On a trip when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(*1*) The vessel operator must notify NMFS via VMS any time prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS, once a vessel that has elected to fish outside of the Eastern U.S./Canada Area leaves the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS demarcation line at the start of its fishing trip until the time the vessel crosses the demarcation line on its return to port, in accordance with § 648.10(b)(2)(iii).

(*2*) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified under § 648.85(a)(3)(v) for the duration of the trip.

(*3*) If the vessel fishes or intends to fish in one of the Differential DAS Areas defined under § 648.82(e)(2)(i), it must declare its intent to fish in the specific Differential DAS Area prior to leaving the Eastern U.S./Canada Area, and must not have exceeded the CC/GOM or SNE/MA yellowtail flounder trip limits, specified in § 648.86(g), for the respective areas.

(*4*) If a vessel possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (i.e., may not fish outside of the U.S./Canada Management Area).

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive regulations applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(*4*) of this section), and the reporting requirements specified in § 648.85(a)(3)(v).

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hours prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements*. NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (b)(8) of this section, must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section, or gear authorized under paragraphs (b)(6) and (b)(8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in this paragraph (a)(3)(iii) may be further specified by the Regional Administrator through publication of such specifications in the FEDERAL REGISTER, consistent with the requirements of the Administrative Procedure Act.

(A) *Haddock Separator Trawl*. A haddock separator trawl is defined as a groundfish trawl modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal large mesh separating panel constructed with a minimum of 6.0 inch (15.2 cm) diamond mesh must be installed between the selvedges joining the upper and lower panels, as described in paragraph (a)(3)(iii)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(*1*) *Two-seam bottom trawl nets*—For two seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 80-85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160-170 meshes wide.

(*2*) *Four-seam bottom trawl nets*—For four seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 90-95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180-190 meshes wide. The separator panel will be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100

meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder Trawl Net.* A flounder trawl net is defined as bottom trawl gear meeting one of the following two net descriptions:

(*1*) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end.

(*2*) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), with the exception that the top panel of the net contains a section of mesh at least 10 ft (3.05 m) long and stretching from selvedge to selvedge, composed of at least 12–in (30.5–cm) mesh that is inserted no farther than 4.5 meshes behind the headrope.

(iv) *Harvest controls.* Vessels fishing in the U.S./Canada Management Areas are subject to the following restrictions, in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas.

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs as required under this section.

(B) *Haddock landing limit—(1) Initial haddock landing limit.* The initial haddock landing limit is specified in § 648.86(a), unless adjusted pursuant to paragraph (a)(3)(iv)(B)(*2*) and (*3*) of this section.

(*2*) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the TAC allocation for haddock specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement, through rulemaking consistent with the Administrative Procedure Act, a haddock trip limit for vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit—(1) Initial yellowtail flounder landing limit.* Unless further restricted under paragraph (a)(3)(iv)(D) of this section (gear performance incentives), or modified pursuant to paragraph (a)(3)(iv)(D), the initial yellowtail flounder landing limit for each fishing year is 10,000 lb (4,536.2 kg) per trip.

(*2*) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC or to facilitate harvesting the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC, in a manner consistent with the Administrative Procedure Act. The Regional Administrator may specify yellowtail flounder trip limits that apply to the whole

U.S./Canada Management Area or to either the Western or Eastern Area.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified under paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(*4*) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, modify the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or facilitate achieving the TAC. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg)(whole weight) each (*i.e.*, no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

(E) *Closure of Eastern U.S./Canada Area.* When the Regional Administrator projects that the TAC allocations specified under paragraph (a)(2) of this section will be caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all groundfish DAS vessels, unless otherwise allowed under this paragraph (a)(3)(iv)(E). Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), groundfish DAS vessels may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP has not been fully harvested. For example, should the TAC allocation for GB cod specified under paragraph (a)(2) of this section be attained, and the Eastern U.S./Canada Area closure implemented, vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. The vessel must continue to report daily, even after exiting the U.S./Canada Management Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day,

or as instructed by the Regional Administrator. The reports must include at least the following information:

(A) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; and total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded;

(B) Date fish were caught and statistical area in which fish were caught; and

(C) Vessel Trip Report (VTR) serial number, as instructed by the Regional Administrator.

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding*. At any time, the Regional Administrator, in consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in place until changed through the framework or FMP amendment process.

(vii) *Transiting*. A multispecies DAS vessel declared into the Eastern U.S./Canada Area as defined in paragraph (a)(1)(ii) of this section, and not fishing in the CA II Yellowtail Flounder SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder SAP as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations at § 648.23(b).

(b) *Special Access Programs*. A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies*. A SAP to harvest NE multispecies may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(2) *SAPs harvesting stocks other than NE multispecies*. A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(3) *Closed Area II Yellowtail Flounder SAP*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Yellowtail Flounder SAP, and may fish in the Closed Area II Yellowtail Flounder Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(3)(xi) of this section, and the DAS balance requirements specified in paragraph (b)(3)(xii) of this section.

(ii) *Closed Area II Yellowtail Flounder Access Area*. The Closed Area II Yellowtail Flounder Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER ACCESS AREA

Point	N. lat.	W. long.
Ytail 1	41°30′	67°20′
Ytail 2	41°30′	66°34.8′
G5	41°18.6′	66°24.8′ [1]
CII 2	41°00′	66°35.8′
CII 1	41°00′	67°20′

CLOSED AREA II YELLOWTAIL FLOUNDER ACCESS AREA—Continued

Point	N. lat.	W. long.
Ytail 1	41°30′	67°20′

[1] The U.S.-Canada Maritime Boundary.

(iii) *Season*. Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period July 1 through December 31.

(iv) *VMS requirement*. All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§648.9 and 648.10.

(v) *Declaration*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; date, time and port of departure; and special access program to be fished, at least 72 hours prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(3)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Yellowtail Flounder SAP must declare into this area through the VMS, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Yellowtail Flounder SAP, a vessel, on the same trip, may also declare its intent to fish in the area outside of Closed Area II that resides within the Eastern U.S./Canada Area as defined in paragraph (a)(1)(ii) of this section, provided the vessel fishes in these areas under the most restrictive provisions of either the Closed Area II Yellowtail Flounder SAP or the Eastern U.S./Canada Area.

(vi) *Number of trips per vessel*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to one trip per calendar month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips per fishing year*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of allowed trips by all vessels combined that may be declared into the Closed Area II Yellowtail Flounder SAP shall be as announced by the Regional Administrator, after consultation with the Council, for each fishing year, prior to June 1, through rulemaking consistent with the Administrative Procedure Act. The total number of trips by all vessels combined that may be declared into this SAP shall not exceed 320 trips per year. When determining the total number of trips, the Regional Administrator shall consider the available yellowtail flounder TAC under the U.S./Canada Resource Sharing Understanding, the potential catch of GB yellowtail flounder by all vessels fishing outside of the SAP, recent discard estimates in all fisheries that catch yellowtail flounder, and the expected number of SAP participants. If the Regional Administrator determines that the available catch, as determined by subtracting the potential catch of GB yellowtail flounder by all vessels outside of the SAP from the GB yellowtail flounder TAC allocation specified in paragraph (a)(2) of this section, is insufficient to allow for at least 150 trips with a possession limit of 15,000 lb (6,804 kg) of yellowtail flounder per trip, the Regional Administrator may choose not to authorize any trips into the SAP during a fishing year.

(viii) *Trip limits*—(A) *Yellowtail flounder trip limit*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 10,000 lb (4,536 kg) of yellowtail flounder per trip. The Regional Administrator may adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (b)(3)(vii) of this section for the maximum number of trips.

(B) *Cod and haddock trip limit*. Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the Closed Area II Yellowtail Flounder SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE

multispecies vessel fishing in the Closed Area II Yellowtail Flounder SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

(ix) *Area fished*. Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder SAP, and other areas as specified under paragraph (b)(3)(v) of this section, may not fish, during the same trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements*. NE multispecies vessels fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Areas defined in paragraph (a)(1) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b).

(xi) *No-discard provision and DAS flips*. A vessel fishing in the CA II Yellowtail Flounder SAP, may not discard legal-sized regulated NE multispecies, Atlantic halibut, or ocean pout. If a vessel fishing in the CA II Yellowtail Flounder SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a vessel operator fishing in the CA II Yellowtail Flounder SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies, ocean pout, or Atlantic halibut than the maximum landing limits allowed per trip, specified under paragraph (b)(3)(iv) or (viii) of this section, or under § 648.86, the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (i.e., either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

(xii) *Minimum Category A DAS*. For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(4) *SNE/MA Winter Flounder SAP*. A limited access NE multispecies vessel fishing for summer flounder west of 72°30′ W. lat., using mesh required under § 648.104(a), may retain and land up to 200 lb (90.7 kg) of winter flounder while not under an NE multispecies DAS, provided the vessel complies with the following restrictions:

(i) The vessel must possess a valid summer flounder permit as required under § 648.4(a)(3), and be in compliance with the restrictions of subpart G of this part;

(ii) The total amount of winter flounder on board must not exceed the amount of summer flounder on board;

(iii) The vessel must not be fishing under an NE multispecies DAS; and

(iv) Fishing for, retention, and possession of regulated species other than winter flounder is prohibited.

(5) *Incidental Catch TACs*. Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be specified through the periodic adjustment process described in § 648.90, and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, and GB winter flounder*. With the exception of GB cod, GB yellowtail flounder, and GB winter flounder, the Incidental Catch TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod*. The Incidental Catch TAC for GB cod specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder*. Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; and 50 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(6) *Regular B DAS Pilot Program*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Pilot Program for the period specified in paragraph (b)(6)(ii) of this section, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may fish under the B Regular DAS Pilot Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Pilot Program and in a SAP on the same trip.

(ii) [Reserved]

(iii) *Quarterly Incidental Catch TACs*. The Incidental Catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs as follows: The first quarter shall receive 13 percent of the Incidental Catch TACs and the remaining quarters shall each receive 29 percent of the Incidental Catch TACs. NMFS shall send letters to all limited access NE multispecies permit holders notifying them of such TACs.

(iv) *Program requirements*—(A) *VMS requirement*. A NE multispecies DAS vessel fishing in the Regular B DAS Pilot Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Pilot Program as required under paragraph (b)(6)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity to only that area on that trip (i.e., the vessel operator may change his/her plans regarding planned fishing area).

(C) *VMS declaration*. To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip. Mere declaration of a Regular B DAS Program trip does not reserve a vessel's right to fish under the Program, if the vessel has not crossed the VMS demarcation line.

(D) *Landing limits*. Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this

section: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, ocean pout, Atlantic halibut, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of regulated species is prohibited. If such a vessel harvests and brings on board legal-sized regulated NE multispecies, or Atlantic halibut in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits specified under § 648.86 or § 648.85(a) and may discard fish in excess of the applicable trip limits.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip. If a vessel is fishing in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in § 648.82(e)(2)(i), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by 2. For example, if a vessel plans a trip under the Regular B DAS Program into the GOM Differential DAS Area and has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 5. A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* With the exception of white hake, when the Regional Administrator provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of quarterly incidental TACs specified under paragraph (b)(6)(iii) of this section has projected to have been harvested, the use of Regular B DAS shall be prohibited in the pertinent stock area(s) as defined under paragraph (b)(6)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use will occur even if the quarterly incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the quarterly white hake incidental catch TAC specified under paragraph (b)(6)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip under a Regular B DAS, will be prohibited from retaining white hake.

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described

in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May-July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(3).

(I) *Reporting requirements*. The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished; total pounds of haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described under paragraph (b)(6)(iv)(E) of this section.

(J) *Gear requirement*. (*1*) Vessels fishing with trawl gear in the Regular B DAS Program must use the haddock separator trawl or Ruhle Trawl net, as described under paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or other type of gear if approved as described under this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program.

(*2*) *Approval of additional gear*. At the request of the Council or the Council's Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(J)(*2*)(*i*) or (*ii*) of this section in a completed experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(J)(*2*) will be made to an appropriately selected control gear.

(*i*) The gear must show a statistically significant reduction in catch of at least 50 percent (by weight, on a trip-by-trip basis) of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(*2*)(*i*), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council. This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(*ii*) The catch of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(*2*)(*ii*), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, must be less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards.

(*3*) *Ruhle Trawl*. The Ruhle Trawl is a four-seam bottom groundfish trawl designed to reduce the bycatch of cod while retaining or increasing the catch of haddock, when compared to traditional groundfish trawls. A Ruhle Trawl must be constructed in accordance with the standards described and referenced in this paragraph § 648.85(b)(6)(iv)(J)(*3*). The mesh size of a particular section of the Ruhle Trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(*i*) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part ANomenclature for 4–seam Ruhle Trawl@ (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (x 2), top wing, bottom wing, wing side panels (x 2), square, bunt, square side panels (x 2), first top belly, first bottom belly, first belly side panels (x 2), second top belly, second bottom belly, second belly side panels (x 2), and third bottom belly.

(*ii*) The first bottom belly, bunt, the top and bottom wings, and the top and bottom jibs, jib side panels, and wing side panels (the first bottom belly and all portions of the net in front of the first bottom belly, with the exception of the square and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(*iii*) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first and second top belly, the first belly side panels, and the third bottom belly must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the second top belly and third bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(*iv*) The trawl must have a fishing circle of at least 398 ft (121.4 m). This number is calculated by separately counting the number of meshes for each section of the net at the wide, fore end of the first bottom belly, and then calculating a stretched length as follows: For each section of the net (first bottom belly, two belly side panels and first top belly) multiply the number of meshes times the length of each stretched mesh to get the stretched mesh length for that section, and then add the sections together. For example, if the wide, fore end of the bottom belly of the Ruhle Trawl is 22 meshes (and the mesh is at least 7.9 ft (240 cm)), the stretched mesh length for that section of the net is derived by multiplying 22 times 7.9 ft (240 cm) and equals 173.2 ft (52.8 m). The top and sides (x 2) of the net at this point in the trawl are 343 meshes (221 + 61 + 61, respectively) (each 7.9 inches (20 cm)), which equals 225.1 ft (68.6 m) stretched length. The stretched lengths for the different sections of mesh are added together (173.2 ft + 225.1 ft (52.8 + 68.6 m)) and result in the length of the fishing circle, in this case 398.3 ft (121.4 m).

(*v*) The trawl must have a single or multiple kite panels with a total surface area of at least 29.1 sq. ft. (2.7 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

(*vi*) The sweep must include rockhoppers of various sizes, which are arranged along the sweep in size order, graduated from 16–inch (40–cm) diameter in the sweep center down to 12–inch (30–cm) diameter at the wing ends. There must be six or fewer 12- to16–inch (30- to 40–cm) rockhopper discs over any 10–ft (3.0–m) length of the sweep. The 12- to16- inch (30- to 40–cm) discs (minimum size) must be spaced evenly, with one disc placed approximately every 2 ft (60 cm) along the sweep. The 12- to 16–inch (30- to 40–cm) discs must be separated by smaller discs, no larger than 3.5 inches (8.8 cm) in diameter.

(v) *Definition of incidental TAC stock areas*. For the purposes of the Regular B DAS Pilot Program, the species stock areas associated with the incidental TACs are defined below. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area*. The GOM cod stock area is the area defined by straight lines connecting the following points in the order stated:

GULF OF MAINE COD STOCK AREA

Point	N. Lat.	W. Long.
GOM1	(1)	70° 00'
GOM2	42° 20′	70° 00′
GOM3	42° 20′	67° 40′
GOM4	43° 50′	67° 40′
GOM5	43° 50′	66° 50′
GOM6	44° 20′	66° 50′
GOM7	44° 20′	67° 00′
GOM8	(2)	67° 00′

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of the south-facing Maine coastline and 67° 00′ W. Long.

(B) *GB cod stock area*. The GB cod stock area is the area defined by straight lines connecting the following points in the order stated:

GEORGES BANK COD STOCK AREA

Point	N. Lat.	W. Long.
GB1	(1)	70° 00′
GB2	42° 20′	70° 00′
GB3	42° 20′	66° 00′
GB4	42° 10′	66° 00′
GB5	42° 10′	65° 50′
GB6	42° 00′	65° 50′
GB7	42° 00′	65° 40′
GB8	40° 30′	65° 40′
GB9	39° 00′	65° 40′
GB10	39° 00′	70° 00′
GB11	35° 00′	70° 0′
GB12	35° 00′	(2)

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.

(C) *CC/GOM yellowtail flounder stock area*. The CC/GOM yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
CCGOM1	43°00′	Intersection with New Hampshire Coastline.
CCGOM2	43°00′	70°00′.
CCGOM3	42°30′	70°00′.
CCGOM4	42°30′	69°30′.
CCGOM5	41°30′	69°30′.
CCGOM6	41°30′	69°00′.
CCGOM7	41°00′	69°00′.
CCGOM8	41°00′	69°30′.
CCGOM5	41°30′	69°30′.
CCGOM9	41°30′	70°00′.
CCGOM10	(1)	70°00′.
CCGOM11	42°00′	Intersection with east facing shoreline of Cape Cod, Massachusetts.
CCGOM12	42°00′	Intersection with west facing shoreline of Massachusetts.

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. lat.	W. long.
CCGOM13	(2)	70°00′

1 Intersection with south facing shoreline of Cape Cod, Massachusetts.
2 Intersection with east facing shoreline of Cape Cod, Massachusetts.

(D) *American plaice stock area*. The American plaice stock area is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. Lat.	W. Long.
AMP1	(1)	67° 00′
AMP2	44° 20′	67° 00′
AMP3	44° 20′	66° 50′
AMP4	43° 50′	66° 50′
AMP5	43° 50′	67° 40′
AMP6	42° 30′	67° 40′
AMP7	42° 30′	66° 00′
AMP8	42° 10′	66° 00′
AMP9	42° 10′	65° 50′
AMP10	42° 00′	65° 50′
AMP11	42° 00′	65° 40′
AMP12	40° 30′	65° 40′
AMP13	39° 00′	65° 40′
AMP14	39° 00′	70° 00′
AMP15	35° 00′	70° 00′
AMP16	35° 00′	(2)

(1) Intersection of south-facing Maine coastline and 67° 00′ W. Long.
(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.

(E) SNE/MA yellowtail flounder stock area. The SNE/MA yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
SNEMA1	40°00′	74°00′
SNEMA2	40°00′	72°00′
SNEMA3	40°30′	72°00′
SNEMA4	40°30′	69°30′
SNEMA5	41°00′	69°30′
SNEMA6	41°00′	69°00′
SNEMA7	41°30′	69°00′
SNEMA8	41°30′	70°00′
SNEMA9	41°00′	70°00′
SNEMA10	41°00′	70°30′
SNEMA11	41°30′	70°30′
SNEMA12	(1)	72°00′
SNEMA13	(2)	72°00′
SNEMA14	(3)	73°00′
SNEMA15	40°30′	73°00′
SNEMA16	40°30′	74°00′
SNEMA17	40°00′	74°00′

1 South facing shoreline of Connecticut.

[2] North facing shoreline of Long Island, New York.
[3] South facing shoreline of Long Island, New York.

(F) *SNE/MA winter flounder stock area.* The SNE/MA winter flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNEW1	(1)	70° 00′
SNEW2	42° 20′	70° 00′
SNEW3	42° 20′	68° 50′
SNEW4	39° 50′	68° 50′
SNEW5	39° 50′	71° 40′
SNEW6	39° 50′	70° 00′
SNEW7	35° 00′	70° 00′
SNEW8	35° 00′	(2)

(1) Intersection of north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.

(G) *Witch flounder stock area.* The witch flounder stock area is the area defined by straight lines connecting the following points in the order stated:

WITCH FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
WF1	(1)	67° 00′
WF2	44° 20′	67° 00′
WF3	44° 20′	66° 50′
WF4	43° 50′	66° 50′
WF5	43° 50′	67° 40′
WF6	42° 20′	67° 40′
WF7	42° 20′	66° 00′
WF8	42° 10′	66° 00′
WF9	42° 10′	65° 50′
WF10	42° 00′	65° 50′
WF11	42° 00′	65° 40′
WF12	40° 30′	65° 40′
WF13	40° 30′	66° 40′
WF14	39° 50′	66° 40′
WF15	39° 50′	70° 00′
WF16	(2)	70° 00′
WF17	(3)	70° 00′
WF18	(4)	70° 00′

(1) Intersection of south-facing Maine coastline and 67° 00′ W. Long.
(2) Intersection of south-facing coastline of Nantucket, MA, and 70° 00′ W. Long.
(3) Intersection of north-facing coastline of Nantucket, MA, and 70° 00′ W. Long.
(4) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.

(vi) *Closure of the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, in a manner consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program. Reasons for terminating the program include, but are not limited to the following: Inability to constrain catches to the Incidental Catch TACs; evidence of excessive discarding; a significant difference in flipping rates between observed and unobserved trips; or insufficient observer coverage to adequately monitor the program.

(7) *CA I Hook Gear Haddock SAP*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified under paragraph (b)(7)(iv)(I) or (b)(7)(vi)(F) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock Access Area.* The CA I Hook Gear Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I HOOK GEAR HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
Hook 1	41° 25.6′	69° 20.2′
Hook 2	41° 29.2′	69° 08.1′
Hook 3	41° 08.5′	68° 50.2′
Hook 4	41° 06.4′	69° 03.3′

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2006 fishing year and beyond, the participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1

through November 15, and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(F) of this section is harvested prior to November 15.

(iv) *General program restrictions*. General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to Sector and non-Sector vessels are specified in paragraphs (b)(7)(iii), (v), and (vi) of this section.

(A) *DAS use restrictions*. A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *VMS requirement*. An eligible NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications*. Starting in the 2006 fishing year, to be eligible to participate in the CA I Hook Gear Haddock SAP, a vessel must notify the NMFS Observer Program by September 1 of its intent to participate in that year. For the 2005 fishing year, for non-Sector vessels to be eligible to participate, non-Sector vessels must notify the NMFS Observer Program by October 24. This notification need not include specific information about the date of the trip. For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration*. Prior to departure from port, a vessel intending to participate in the CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and indicate the type of DAS that it intends to fish. A vessel declared into the CA I Hook Gear Haddock SAP may fish only on a declared trip in the CA I Hook Gear Haddock Special Access Area described under paragraph (b)(7)(ii) of this section.

(E) *Gear restrictions*. A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified under paragraph (b)(7)(v)(B) of this section.

(F) *Haddock TAC—(1) Allocation and Distribution*. The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: $\text{Biomass}_{\text{YEAR X}}$= (1,130 mt live weight) x (Projected WGB Haddock Exploitable $\text{Biomass}_{\text{YEAR X}}$/WGB Haddock Exploitable Biomass_{2004}). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The maximum amount of haddock that may be caught in this SAP during each fishing year is divided evenly between the two participation periods of October 1 - November 15 and November 16 - December 31, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with applicable law.

(*2*) *Adjustments to the haddock TAC*. The Regional Administrator may adjust the portion of the haddock TAC specified for the second participation period to account for under- or overharvest of the portion of the haddock TAC (landings and discards) that was harvested during the first participation

period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the Closed Area I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the Closed Area I Hook Gear Haddock SAP, and must exit the SAP if the vessel exceeds the applicable landing limits described in paragraph (b)(7)(iv)(H) of this section.

(H) *Landing limits.* For all eligible vessels declared into the Closed Area I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies other than cod, which are specified at paragraphs (b)(7)(v)(C) and (b)(7)(vi)(C) of this section, are as specified at § 648.86. Such vessels are prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator determines that the haddock TAC specified in paragraph (b)(7)(iv)(F) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock SAP Area as specified in paragraph (b)(7)(ii) of this section, to all eligible vessels.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified at paragraph (b)(7)(iv) of this section, the restrictions specified in this paragraph (b)(7)(v) apply only to Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B, or Reserve B DAS, in accordance with § 648.82(d).

(B) *Gear restrictions.* A vessel enrolled in the Sector is subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(d).

(C) *Landing limits.* A Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the cod landing limit in effect under the Sector's Operations Plan as approved under § 648.87(d).

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

(E) *GB cod incidental catch TAC.* There is no GB cod incidental catch TAC specified for Sector vessels declared into the CA I Hook Gear Haddock SAP. All cod caught by Sector vessels fishing in the SAP count toward the Sector's annual GB cod TAC, specified in § 648.87(d)(1)(iii).

(vi) *Non-Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, the restrictions specified in this paragraph (b)(7)(vi) apply only to non-Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Non-Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A non-Sector vessel is prohibited from using A DAS when declared into the SAP.

(B) *Gear restrictions.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v).

(C) *Landing limits.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph

(b)(7)(i) of this section may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A non-Sector vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements*. The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2400 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

(E) *GB cod incidental catch TAC*. The maximum amount of GB cod (landings and discards) that may be cumulatively caught by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(5)(ii) of this section.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of GB cod incidental catch TAC*. When the Regional Administrator determines that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(E) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

(8) *Eastern U.S./Canada Haddock SAP*—(i) *Eligibility*. A vessel issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section, is eligible to participate in the Eastern U.S./Canada Haddock SAP, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessel complies with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section, or the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section.

(ii) *Eastern U.S./Canada Haddock SAP Area*. The Eastern U.S./Canada Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAII3	42° 22′	67° 20′ (1)
SAP1	42° 20′	67° 20′
SAP2	42° 20′	67° 40′
SAP3	41° 10′	67° 40′
SAP4	41° 10′	67° 20′
SAP5	42° 10′	67° 20′
SAP6	42° 10′	67° 10′
CAII3	42° 22′	67° 20′ (1)

(1) U.S./Canada maritime boundary.

(iii) [Reserved]

(iv) *Season*. An eligible vessel may fish in the Eastern U.S./Canada Haddock SAP from August 1 through December 31.

(v) *Program restrictions*—(A) *DAS use restrictions*. A vessel fishing in the Eastern U.S./Canada Haddock SAP may elect to fish under a Category A or Category B DAS, in accordance with § 648.82(d)(2)(i)(A) and the restrictions of this paragraph (b)(8)(v)(A).

(*1*) If fishing under a Category B DAS, a vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(8)(v)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(v)(J) of this section.

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8)(i) of this section may fish, on the same trip, in

the Eastern U.S./Canada Haddock SAP Area and in the Closed Area II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder Access Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(*4*) A vessel that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting, trip limits, and reporting requirements of the areas fished for the entire trip, including those in paragraph (a)(3)(ii)(A)(*3*) of this section.

(B) *VMS requirement*. A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Program specified under paragraph (b)(8)(i) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications*. For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration*. Prior to departure from port, a vessel intending to participate in the Eastern U.S./Canada Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and on the areas within the Eastern U.S./Canada Area that it intends to fish, in accordance with paragraph (b)(8)(v)(A) of this section and instructions provided by the Regional Administrator.

(E) *Gear requirement*—(*1*) A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl or Ruhle Trawl net, as described under paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or other type of gear, if approved as described under this paragraph (b)(8)(v)(E). No other type of fishing gear may be on the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, with the exception of a flounder net, as described in paragraph (a)(3)(iii) of this section, provided that the flounder net is stowed in accordance with § 648.23(b).

(*2*) *Approval of additional gear*. The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(J)(*2*).

(F) *Landing limits*. Unless otherwise restricted, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight), and skates (whole weight) is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited.

(G) *Reporting requirements*. The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this

section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(v) of this section.

(H) *Incidental TACs*. The maximum amount of GB cod, and the amount of GB yellowtail flounder and GB winter flounder, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A), is the amount specified in paragraphs (b)(5)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips*. A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout. If a vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified under paragraph (b)(8)(v)(F) of this section, or under § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is subject to all applicable landing limits specified under § 648.85(a) or § 648.86. If a vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified under paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined under paragraph (b)(8)(ii) of this section for the remainder of the trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

(J) *Minimum Category A DAS*. To fish under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP*. When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP, through publication in the FEDERAL REGISTER consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area*. The Regional Administrator, based upon information required under § 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is determined that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

(c) *Scallop fishery closed area access program*. Limited access scallop vessels operating under the Sea Scallop Area Access Program, as defined in § 648.59, and fishing in accordance with the regulations at § 648.60 may possess and land up to 1,000 lb (453.6 kg) of all NE multispecies combined, as provided in § 648.60(a)(5)(ii), unless otherwise restricted in this section.

(1) *Yellowtail flounder bycatch TAC allocation*. An amount of yellowtail flounder equal to 10 percent of the total yellowtail flounder TAC for each of the stock area specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section may be harvested by scallop vessels subject to the restrictions of this paragraph. Limited access scallop vessels enrolled in the Sea Scallop Area Access Program and fishing within the Area Access areas defined at § 648.59(b) through (d) may harvest yellowtail flounder up to 9.8 percent of the applicable yellowtail flounder TAC. Scallop vessels participating in approved research under the process described in § 648.56, and fishing in the Access Areas specified in § 648.59(b) through (d), may harvest 0.2 percent of the applicable yellowtail flounder TAC. The amount

of yellowtail flounder that may be harvested in each fishing year under this section shall be specified in a small entity compliance guide.

(i) *SNE/MA yellowtail flounder*. Limited access scallop vessels may harvest an amount of yellowtail flounder equal to 9.8 percent of the SNE/MA yellowtail flounder TAC from the Nantucket Lightship Closed Area Sea Scallop Access Area for each fishing year, unless otherwise prohibited under paragraph (c)(3) of this section. An amount of yellowtail flounder equal to 0.2 percent of the SNE/MA yellowtail flounder bycatch TAC, as specified in paragraph (c)(1) of this section, is set aside to allow for the harvest of yellowtail flounder during research approved under the scallop research program specified in § 648.56 and conducted in the Access Areas specified in § 648.59(b) through (d).

(ii) *GB yellowtail flounder*. Limited access scallop vessels may harvest an amount of yellowtail flounder up to 9.8 percent of the GB yellowtail flounder TAC from the Closed Area I and Closed Area II Sea Scallop Access Areas, combined, for each fishing year, unless otherwise prohibited under paragraph (c)(3) of this section. An amount of yellowtail flounder equal to 0.2 percent of the GB yellowtail flounder TAC, as specified in paragraph (c)(1) of this section, is set aside to allow for the harvest of yellowtail flounder during research approved under the scallop research program specified in § 648.56.

(2) *Adjustments to the yellowtail flounder TAC allocation*. If, on or after December 1 of each year, information is available to make an accurate projection of yellowtail catch through the end of the fishing year, and if the Regional Administrator projects that the total GB yellowtail flounder TAC for the NE multispecies fishery specified at § 648.85(a)(2) will not be harvested by the end of the fishing year, and if the catch of yellowtail flounder in the Sea Scallop Area Access Program is below 10 percent of the GB yellowtail flounder bycatch TAC specified in paragraph (c)(1) of this section, the Regional Administrator may, through rulemaking consistent with the Administrative Procedure Act, increase the yellowtail flounder bycatch TAC allocated to vessels participating in the Sea Scallop Area Access Program above 10 percent, provided that such increase will not result in exceeding the total GB yellowtail flounder TAC specified in § 648.85(a)(2).

(3) *Possession restriction and closure when yellowtail flounder TAC has been harvested*. (i) If the Regional Administrator determines that the GB yellowtail flounder TAC specified for the U.S./Canada Management Area under paragraph (a)(2) of this section has been harvested or is projected to be harvested, and notification has been published in the FEDERAL REGISTER, pursuant to paragraph (a)(3)(iv)(C)(*3*) of this section, but the yellowtail flounder bycatch TAC allocation for the GB stock specified under paragraph (c)(1)(ii) of this section has not been harvested, scallop vessels may continue to fish in the Sea Scallop Area Access Program, but may not retain or land yellowtail flounder, until the yellowtail flounder bycatch TAC is caught, as specified in paragraph (c)(3)(ii) of this section. All catch of yellowtail flounder must continue to be reported by scallop vessels fishing in Access Areas as required under § 648.60.

(ii) If the Regional Administrator determines that the yellowtail flounder bycatch TAC allocation specified under paragraph (c)(1)(i) or (c)(1)(ii) of this section has been, or is projected to be harvested, scallop vessels may not fish within the applicable Access Area for the remainder of the fishing year. The Regional Administrator shall publish notification in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to notify vessels that they may no longer fish within the applicable Access Area for the remainder of the fishing year.

(d) *Incidental catch allowance for some limited access herring vessels*. The incidental catch allowance for vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit is defined as 0.2 percent of the combined target TAC for Gulf of Maine haddock and Georges Bank haddock (U.S. landings only) specified according to

§ 648.90(a) for a particular multispecies fishing year.

[69 FR 22975, Apr. 27, 2004, as amended at 69 FR 32900, June 14, 2004; 69 FR 41026, July 7, 2004; 69 FR 63480, Nov. 2, 2004; 69 FR 67798, Nov. 19, 2004; 70 FR 31341, June 1, 2005; 70 FR 54307, Sept. 14, 2005; 70 FR 76427, Dec. 27, 2005; 71 FR 33235, June 8, 2006; 71 FR 46876, Aug. 15, 2006; 71 FR 62189, Oct. 23, 2006; 72 FR 11276, Mar. 12, 2007; 72 FR 53949, Sept. 21, 2007; 72 FR 72967, Dec. 26, 2007; 72 FR 72379, Dec. 27, 2007; 73 FR 40190, July 14, 2008; 73 FR 52215, Sept. 9, 2008]

§ 648.86 NE Multispecies possession restrictions.

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock*—(1) *NE multispecies DAS vessels*—(i) *Implementation and adjustments to the haddock trip limit to prevent exceeding the Target TAC.* At any time prior to or during the fishing year, if the Regional Administrator projects that the Target TAC for haddock will be exceeded in that fishing year, NMFS may implement or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to prevent exceeding the Target TAC in that fishing year.

(ii) *Implementation and adjustments to the haddock trip limit to facilitate harvest of the Target TAC.* At any time prior to or during the fishing year, if the Regional Administrator projects that less than 90 percent of the Target TAC for that fishing year will be harvested, NMFS may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to facilitate a haddock harvest and enable the total catch to approach the Target TAC for that fishing year.

(iii) *Adjustments*—(A) *Adjustment to the haddock trip limit to prevent exceeding the target TAC.* At any time during the fishing year, if the Regional Administrator projects that the target TAC for haddock will be exceeded, NMFS may adjust, through publication of a notification in the FEDERAL REGISTER, the trip limit per DAS and/or the maximum trip limit to an amount that the Regional Administrator determines will prevent exceeding the target TAC.

(B) Adjustment of the haddock trip limit to allow harvesting of up to 75 percent of the target TAC. At any time during the fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC for haddock will be harvested by the end of the fishing year, NMFS may adjust or eliminate, through publication of a notification in the FEDERAL REGISTER, the trip limit per DAS and/or the maximum trip limit to an amount, including elimination of the per day and/or per trip limit, that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without an NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3)(i) *Incidental catch allowance for some limited access herring vessels.* Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land haddock on all trips that do not use a NE multispecies DAS, subject to the requirements specified in § 648.80(d) and (e).

(ii) *Haddock incidental catch cap.* (A)(*1*) When the Regional Administrator has determined that the incidental catch allowance in § 648.85(d) has been caught, all vessels issued an Atlantic herring permit or fishing in the Federal portion of the GOM/GB Herring Exemption Area, defined in this paragraph (a)(3)(ii)(A)(*1*), are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the GOM/GB Herring Exemption Area, unless all herring possessed and landed by the vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the Exemption Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, regardless of where they were fishing. In making this determination, the Regional Administrator shall use haddock landings observed by NMFS-approved observers and law enforcement officials, and reports of haddock catch submitted by vessels and dealers pursuant to the reporting requirements of this part. The GOM/GB Herring Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GB/GOM HERRING EXEMPTION AREA

Point	N. lat.	W. long.
1	41° 33.05′	70° 00′
2	41° 20′	70° 00′
3	41° 20′	69° 50′
4	41° 10′	69° 50′
5	41° 10′	69° 30′
6	41° 00′	69° 30′
7	41° 00′	68° 50′
8	39° 50′	68° 50′
9	39° 50′	66 °40′
10	40 °30′	66° 40′
11	40 °30′	64 °44.34′
12	41 °50′	66 °51.94′
13	41 °50′	67 °40′
14	44 °00′	67 °40′
15	44 °00′	67 °50′
16	44 °10′	67 °50′
17	44 °27′	67 °59.18′
18	ME, NH, MA Coastlines	
19	41 °33.05′	70° 00′

(*2*) The haddock incidental catch cap specified is for the NE multispecies fishing year (May 1 April 30), which differs from the herring fishing year (January 1 December 31). If the haddock catch cap is attained by the limited access herring fishery, the 2,000–lb (907.2–kg) limit on herring possession and landings in the GOM/GB Herring Exemption Area will be in effect until the end of the NE multispecies fishing year. For example, the 2006 haddock catch cap would be specified for the period May 1, 2006 April 30, 2007, and the 2007 haddock catch cap would be specified for the period May 1, 2007 April 30, 2008. If the catch of haddock by limited access herring vessels reached the 2006 catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2007), the 2,000–lb (907.2–kg) limit on possession or landing herring in the GOM/GB Herring Exemption Area would extend through April 30, 2007, at which time the 2007 catch cap would go into effect.

(B) [Reserved]

(b) *Cod*—(1) *GOM cod landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies

with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard and, after returning to port, does not depart from a dock or mooring in port, unless transiting as allowed under paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port) may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip).

(B) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system, as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.

(2) *GB cod landing and maximum possession limits*. (i) Unless otherwise restricted under § 648.85 or the provisions of paragraph (b)(2)(ii) of this section, or unless exempt from the landing limit under paragraph (b)(1) of this section as authorized under the Sector provisions of § 648.87, a NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod per DAS, or part of a DAS, provided it complies with the requirements specified at paragraph (b)(4) of this section and this paragraph (b)(2). A NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after such vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg) of cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) of cod for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4,536 kg) of cod per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 2,000 lb (907.2 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24-hr block may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of

the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.)

(B) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard, and after returning to port does not depart from a dock or mooring in port, unless transiting, as allowed under paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip.)

(3) *Transiting*. A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption*. A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the Gulf of Maine Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration*. With the exception of vessels declared into the U.S./Canada Management Area, as described under § 648.85(a)(3)(ii), a NE multispecies DAS vessel that fishes or intends to fish south of the line described in paragraph (b)(4) of this section, under the cod trip limits described under paragraph (b)(2) of this section, must, prior to leaving the dock, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the authorization letter on board.

(ii) A vessel exempt from the GOM cod landing limit may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

(c) *Atlantic halibut*. A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

(d) *Small-mesh multispecies*. (1) Vessels issued a valid Federal NE multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 inches (6.35 cm)*. Owners or operators of a vessel may possess and land not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 2.5 inches (6.35 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured in accordance with § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is smaller than 2.5 inches (6.35 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 2.5 inches (6.35 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm)*. Owners or operators of a vessel that is not subject to the possession limit specified in paragraph (d)(1)(i) of this section may possess and land not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 2.5 inches (6.35 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(iii) *Vessels possessing on board or using nets of mesh size equal to or greater than 3 inches (7.62 cm)*. An owner or operator of a vessel that is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section may possess and land not more than 30,000 lb (13,608 kg) of combined silver hake and offshore hake if both of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); and

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is equal to or greater than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 3 inches (7.62 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(iv) *Application of mesh size*. Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i) through (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft by 3 ft (0.9 m by 0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery*. Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3), with a vessel

issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) *White hake.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536 kg) per trip.

(f) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder*—(1) *CC/GOM and SNE/MA yellowtail flounder landing limit.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined under § 648.85(a)(1), may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,000 lb (453.6 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g)) or § 648.85(a)(3)(iv)(C).

(2) *GB yellowtail flounder landing limit.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1) is subject to the GB yellowtail flounder limit described under paragraph § 648.85(a)(3)(iv)(c).

(h) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit.* A vessel that has ended a trip as specified in § 648.10(b)(2)(iii) or (c)(3) that possesses on board species regulated by a daily possession limit (i.e., pounds per DAS), as specified at § 648.85 or § 648.86, must offload species in excess of the daily landing limit prior to leaving port on a subsequent trip. A vessel may retain on board up to one day's worth of such species prior to the start of a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested in excess of 1,000 lb (453 kg) (i.e., the vessel may retain up to 1,000 lb (453 kg) of Georges Bank cod, but must offload any additional cod), but may retain on board winter flounder up to the maximum trip limit prior to

leaving port and crossing the VMS demarcation line to begin a subsequent trip.

(j) *GB winter flounder*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1), may not possess or land more than 5,000 lb (2,268.1 kg) of GB winter flounder per trip.

(k) *Other regulated NE multispecies possession restrictions for limited access herring vessels*. All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land up to 100 lb (45 kg), combined, of other regulated NE multispecies on all trips that do not use a multispecies DAS, subject to the requirements specified in § 648.80(d) and (e). Such fish may not be sold for human consumption.

[69 FR 22978, Apr. 27, 2004, as amended at 70 FR 76428, Dec. 27, 2005; 71 FR 46876, Aug. 15, 2006; 71 FR 62193, Oct. 23, 2006; 72 FR 11277, Mar. 12, 2007; 72 FR 73280, Dec. 27, 2007]

§ 648.87 Sector allocation.

(a) *Procedure for implementing Sector allocation proposal*. (1) Any person may submit a Sector allocation proposal for a group of limited access NE multispecies vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at § 648.90(a)(2), in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal be initiated, the Council should follow the framework adjustment provisions of § 648.90(a)(2). Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the NE multispecies regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations*. (1) All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (b)(2) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) The sector allocation must be based on either a TAC limit (hard TAC), or a maximum DAS usage limit for all vessels with a target TAC.

(ii) A Sector shall be allocated no more than 20 percent of a stock's TAC, unless otherwise authorized by the Council.

(iii) Allocation of catch or effort shall be based upon documented accumulated catch histories of the harvested stock(s) for each vessel electing to fish in a Sector, for the 5–year period prior to submission of a Sector allocation proposal to the Council. Documented catch shall be based on dealer landings reported to NMFS.

(iv) Landings histories for Sectors formed to harvest GB cod during the period 2004 through 2007 shall be based on fishing years 1996 through 2001.

(v) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(vi) Once a hard TAC allocated to a Sector is projected to be exceeded, Sector operations will be terminated for the remainder of the fishing year.

(vii) Should a hard TAC allocated to a Sector be exceeded in a given fishing year, the Sector's allocation will be reduced by the overage in the following fishing year, and the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If the Sector exceeds its TAC in more than 1 fishing year, the Sector's share may be permanently reduced, or the Sector's authorization to operate may be withdrawn.

(viii) If a hard or target TAC allocated to a Sector is not exceeded in a given fishing year, the Sector's allocation of TAC or DAS will not be reduced

for the following fishing year as a result of an overage of a hard or target TAC by non-compliant Sectors or by non-Sector vessels.

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for violations of such conditions and requirements and any other applicable Federal regulations, resulting in an assessment of civil penalties and permit sanctions pursuant 15 CFR part 904.

(x) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(xi) Once a vessel operator and/or vessel owner signs a binding contract to participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(xii) Vessels that fish under the DAS program outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for DAS used prior to implementation of the Sector.

(xiii) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(xi) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(xiv) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the NE multispecies regulations for non-Sector vessels specified under this part.

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by NMFS pursuant to paragraph (c)(2) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(2) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section

(2) *Operations Plan and Sector Contract.* Each Sector must submit an Operations Plan and Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each fishing year. The following elements must be contained in either the Operations Plan or Sector Contract:

(i) A list of all parties, vessels, and vessel owners who will participate in the Sector;

(ii) A contract signed by all Sector participants indicating their agreement to abide by the Operations Plan;

(iii) The name of a designated representative or agent for service of process;

(iv) If applicable, a plan for consolidation or redistribution of catch or effort, detailing the quantity and duration of such consolidation or redistribution of catch or effort within the Sector;

(v) Historic information on the catch or effort history of the Sector participants, consistent with the requirements specified in paragraph (b) of this section, and any additional historic information specified in the framework adjustment;

(vi) A plan and analysis of the specific management rules the Sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards;

(vii) A plan that defines the procedures by which members of the Sector that do not abide by the rules of the Sector will be disciplined or removed from the Sector, and a procedure for notifying NMFS of such expulsions from the Sector;

(viii) If applicable, a plan of how the TAC or DAS allocated to the Sector is assigned to each vessel;

(ix) If the Operations Plan is inconsistent with, or outside the scope of the NEPA analysis associated with the Sector proposal/framework adjustment as specified in paragraph (b)(1)(v) of this section, a supplemental NEPA analysis may be required with the Operations Plan.

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operations Plan specified in this paragraph (b)(2) and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved Operations Plan. Each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for violations of Sector Operations Plan requirements as well as any other applicable Federal regulations, resulting in an assessment of civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator*. (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

(2) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE Multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(3) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at any time if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking consistent with applicable law.

(d) *Approved Sector allocation proposals*—(1) *GB Cod Hook Sector*. Eligible NE multispecies DAS vessels, as specified in paragraph (d)(1)(ii) of this section, may participate in the GB Cod Hook Sector within the GB Cod Hook Sector Area, under the Sector's Operations Plan, provided the Operations

Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner comply with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section.

(i) *GB Cod Hook Sector Area (GBCHSA)*. The GBCHSA is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GEORGES BANK COD HOOK SECTOR AREA

Point	N. Lat.	W. Long.
HS1	(1)	70°00′
HS2	42°20′	70°00′
HS3	42°20′	3 67°18.4′
Follow the U.S. EEZ boundary south to HS4		
HS4	39°00′	66°45.5′
HS5	39°00′	71°40′
HS6	(2)	71°40′

1 The east facing shoreline of Cape Cod, MA.
2 The south facing shoreline of Rhode Island.
3 The U.S. Canada Maritime Boundary.

(ii) *Eligibility*. All vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector.

(iii) *TAC allocation*. For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, regardless of gear used, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(1)(iii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(1)(iii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iv) *Requirements*. A vessel fishing under the GB Cod Hook Sector may not fish with gear other than jigs, demersal longline, or handgear.

(2) *GB Cod Fixed Gear Sector*. Eligible NE multispecies DAS vessels, as specified in paragraph (d)(2)(i) of this section, may participate in the GB Cod Fixed Gear Sector within the area defined as the GB Cod Hook Sector Area, as specified under paragraph (d)(1)(i) of this section, under the GB Cod Fixed Gear Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner complies with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section.

(i) *Eligibility*. All vessels issued a limited access NE multispecies DAS permit are eligible to participate in the GB Cod Fixed Gear Sector.

(ii) *TAC allocation*. For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operations Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, regardless of gear used, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(2)(ii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(2)(ii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Fixed Gear Sector for the fishing year in question.

(iii) *Requirements*. A vessel fishing under the GB Cod Fixed Gear Sector may not fish with gear other than jigs, non-automated demersal longline, hand gear, or sink gillnets.

[69 FR 22981, Apr. 27, 2004, as amended at 70 FR 31342, June 1, 2005; 70 FR 76429, Dec. 27, 2005; 71 FR 62195, Oct. 23, 2006; 72 FR 73281, Dec. 27, 2007; 73 FR 18218, Apr. 3, 2008]

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit*. A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (34 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified under paragraph (a)(2) of this section. Should the GOM cod trip limit specified under § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) will be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

(2) *Restrictions:* (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(b) *Charter/party permit*. A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit*. With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

(d) *Non-regulated NE multispecies permit*. A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

(e) *Scallop NE multispecies possession limit permit*. With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under (a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(iii).

[69 FR 22983, Apr. 27, 2004, as amended at 69 FR 63481, Nov. 2, 2004; 71 FR 62195, Oct. 23, 2006]

EFFECTIVE DATE NOTE: At 72 FR 44981, Aug. 10, 2007, § 648.88 was amended by suspending paragraph (c) and adding paragraph (e), effective Aug. 10, 2007, through Feb. 6, 2008. At 72 FR 64000, Nov. 14, 2007, the effective date was extended through Aug. 10, 2008.

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line, and one line per angler, and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes.* Unless further restricted under paragraph (b)(3) of this section, persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL), as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes
Cod	22″ (58.4 cm)
Haddock	19″ (48.3 cm)
Pollock	19″ (48.3 cm)
Witch flounder (gray sole)	14″ (35.6 cm)
Yellowtail flounder	13″ (33.0 cm)
Atlantic halibut	36″ (91.4 cm)
American plaice (dab)	14″ (35.6 cm)
Winter flounder (blackback)	12″ (30.5 cm)
Redfish	9″ (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section may not possess cod smaller than 24 inches (63.7 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

(4) The minimum fish size applies to whole fish or to any part of a fish while possessed on board either a charter/party or a private recreational vessel, or at the time of landing. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(c) *Cod possession restrictions*—(1) *Recreational fishing vessels.* (i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day in, or harvested from, the EEZ.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(v) *Seasonal GOM cod possession prohibition.* Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1) may not fish for or possess any cod from November 1 through March 31. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(2)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(v) *Seasonal GOM cod possession prohibition.* Persons aboard charter/party fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1) may not fish for or possess any cod from November 1 through March 31. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(4) *Accounting of daily trip limit.* For the purposes of determining the per day trip limit for cod for recreational fishing vessels and party/charter vessels, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or recreational fishing vessels fishing in the EEZ.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM Closed Areas.* A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The letter of authorization is required for a minimum of 3 months, if the vessel intends to fish in the seasonal GOM closure areas, or is required for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) With the exception of tuna, fish harvested or possessed by the vessel may not be sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel

may not use any NE multispecies DAS during the period of participation.

[69 FR 22984, Apr. 27, 2004, as amended at 71 FR 62196, Oct. 23, 2006; 72 FR 73281, Dec. 27, 2007]

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

For the NE multispecies framework specification process described in this section, starting in fishing year 2004, the large-mesh species, halibut and ocean pout biennial review (referred to as NE multispecies) is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section.

(a) NE multispecies—(1) *NE Multispecies annual SAFE Report*. The NE Multispecies Plan Development Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) *Biennial review*. (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives, including changes to the Northeast Region SBRM. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS, DAS use, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, social and economic impacts, enforcement issues, and any other relevant information.

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but

not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, etc.) and DAS baselines, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

(iv) The Council shall review the target TACs recommended by the PDT and all of the options developed by the PDT and other relevant information; consider public comment; and develop a recommendation to meet the FMP objective pertaining to regulated species, Atlantic halibut, and ocean pout that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(2)(vii) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the FEDERAL REGISTER as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the FEDERAL REGISTER, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a

proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

(3) *Review in 2008 for the 2009 fishing year*. In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(b) *Small mesh species*—(1) *Annual review*. The Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for Council consideration on any changes, adjustments, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(i) The WMC shall review available data pertaining to: Catch and landings, discards, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and any other management measures currently included in the FMP.

(iii) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the WMC, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objectives pertaining to small-mesh multispecies that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the WMC, unless rejected by the Council, as specified in paragraph (b)(1)(vi) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(iv) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(v) If the Council submits, on or before January 7, a recommendation to

the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the FEDERAL REGISTER as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b)(2) of this section and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the FEDERAL REGISTER, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue.

(vi) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about April 1 of each year, with the exception noted in paragraph (b)(1)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

(2) [Reserved]

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate

(if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs).

(ii) *Adjustment process for whiting TACs and DAS.* The Council may develop recommendations for a whiting DAS effort reduction program or a whiting TAC through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55 (d) and (e).

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) *Flexible Area Action System.* (1) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies,

shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the FEDERAL REGISTER requesting public comments in accordance with the procedures therefore in Amendment 3 to the NE Multispecies FMP.

(2) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(3) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(4) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(5) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the FEDERAL REGISTER and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(6) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the FEDERAL REGISTER.

(7) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Administrator may determine that facts warrant a delayed effective date.

(e) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

[69 FR 22984, Apr. 27, 2004, as amended at 70 FR 76429, Dec. 27, 2005; 73 FR 4754, Jan. 28, 2008]

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, possessing or landing monkfish must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Northern Fishery Management Area (NFMA)—Area definition.* The NFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at the intersection of 70° W. longitude and the south-facing shoreline of Cape Cod, MA (point A), then southward along 70° W. longitude to 41° N. latitude, then eastward to the U.S.-Canada maritime boundary, then in a northerly direction along the U.S.-Canada maritime boundary until it intersects the Maine shoreline, and then following the coastline in a southerly direction until it intersects with point A.

(b) *Southern Fishery Management Area (SFMA)—Area definition.* The SFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at point A, then in a southerly direction to the NC-SC border, then due east to the 200–mile limit, then in a northerly direction along the 200–mile limit to the U.S.-Canada maritime boundary, then in a northwesterly direction along the U.S.-Canada maritime boundary to 41° N. latitude, and then westward to 70° W. longitude, and finally north to the shoreline at Cape Cod, MA (point A).

(c) *Gear restrictions*—(1) *Minimum mesh size*—(i) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the NE multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and NE multispecies DAS.* Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(ii). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(i) of this section.

(iii) *Gillnets while on a monkfish DAS.* The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10–inch (25.4–cm) diamond mesh, unless otherwise provided for under § 648.92(b)(1)(iii)(B).

(iv) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

(2) *Other gear restrictions.* (i) A vessel may not fish with dredges or have dredges on board while fishing under a monkfish DAS.

(ii) All other non-conforming gear must be stowed as specified in § 648.23(b).

(iii) The mesh size restrictions in paragraph (c)(1) of this section do not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 ft^2 (0.81 m^2)).

(3) *SFMA trawl roller gear restriction.* The roller gear diameter on any vessel on a monkfish DAS in the SFMA may not exceed 6 inches (15.2 cm) in diameter.

[64 FR 54747, Oct. 7, 1999, as amended at 65 FR 37917, June 19, 2000; 67 FR 50323, Aug. 1, 2002; 70 FR 21942, Apr. 28, 2005; 72 FR 53949, Sept. 21, 2007]

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) *General.* A vessel issued a limited access monkfish permit may not fish for, possess, retain, or land monkfish, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, except as otherwise provided in this part.

(1) *End of year carryover.* With the exception of a vessel that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carryover year, a limited access monkfish vessel that has unused monkfish DAS on the last day of April of any year may carry over a maximum of 4 unused monkfish DAS into the next fishing year. A vessel whose DAS have been sanctioned through enforcement proceedings shall be credited with unused DAS based on its DAS allocation minus any DAS that have been sanctioned.

(2) [Reserved]

(b) *Monkfish DAS program—permit categories and allocations*—(1) *Limited access monkfish permit holders*—(i) *General provision*. Limited access monkfish permit holders shall be allocated 31 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by § 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *DAS restrictions for vessels fishing in the SFMA*. Limited access monkfish vessels may only use 23 of their 31 monkfish DAS allocation in the SFMA. All limited access monkfish vessels fishing in the SFMA must declare that they are fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, if a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit*. Any limited access NE multispecies vessel fishing under a NE multispecies Category A DAS in the NFMA, and issued an LOA as specified in § 648.94(f), may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

(A) Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage requirements (i.e., use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(2)(i) of this section.

(B) Gillnet vessels that change their DAS declaration in accordance with this paragraph (b)(1)(iii) are not subject to the gillnet minimum mesh size restrictions found at § 648.91(c)(1)(iii), but are subject to the smaller NE multispecies minimum mesh requirements for gillnet vessels found under § 648.80 based upon the NE Multispecies Regulated Mesh Area in which the vessel is fishing.

(iv) *Offshore Fishery Program DAS allocation*. A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(v) *Research DAS set-aside*. A total of 500 DAS shall be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS shall be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction shall be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 31 DAS and there were 750 limited access monkfish permits issued during FY 2006, the number of DAS allocated to each vessel during FY 2007 would be 31 DAS minus 0.7 (500 DAS divided by 750 permits), or 30.3 DAS.

(2) *Category C, D, F, G, or H limited access monkfish permit holders*. (i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the

number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 20, and the vessel fished 20 of its 31 monkfish DAS, 20 NE multispecies Category A DAS would also be used. However, after all 20 NE multispecies Category A DAS are used, the vessel may utilize its remaining 11 monkfish DAS to fish for monkfish, without a NE multispecies DAS being used. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B Regular DAS under the NE Multispecies Regular B DAS Program, as specified under § 648.85(b)(6), in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

(ii) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G, or H vessel that has ''monkfish-only'' DAS, as specified in paragraph (b)(2)(i) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available ''monkfish-only'' DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(k), must forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 31 unused monkfish DAS and 35 allocated NE multispecies DAS, leased 10 of its NE multispecies DAS to another vessel, the lessor would forfeit 6 of its monkfish DAS (10 - (35 NE multispecies DAS - 31 monkfish DAS) = 6).

(3) *Accrual of DAS.* Same as § 648.53(f).

(4) *Good Samaritan credit.* Same as § 648.53(g).

(5) [Reserved]

(6) *Declaring monkfish DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program using the notification requirements specified in § 648.10.

(7) *Adjustments in annual monkfish DAS allocations.* Adjustments in annual monkfish DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of § 648.96.

(8) *Gillnet restrictions*—(i) *Number and size of nets.* (A) *Category A and B vessels.* A vessel issued a monkfish limited access Category A or B permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(B) *Category C, D, F, G, and H vessels that possess a limited access NE multispecies permit.* A vessel issued a valid monkfish limited access Category C, D, F, G, or H permit that possesses a valid limited access NE multispecies permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, and fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning May 1, 2000, all gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS must have one monkfish tag per

net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in § 648.4. A vessel operator must account for all net tags upon request by an authorized officer.

(iii) *Lost tags.* A vessel owner or operator must report lost, destroyed, or missing tag numbers by letter or fax to the Regional Administrator within 24 hours after tags have been discovered lost, destroyed, or missing.

(iv) *Replacement tags.* A vessel owner or operator seeking replacement of lost, destroyed, or missing tags must request replacement tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before the tags will be re-issued.

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS shall accrue 15 hours monkfish DAS for all trips less than or equal to 15 hours in duration. Such vessels shall accrue monkfish DAS based on actual time at sea for trips greater than 15 hours in duration. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the requirements and conditions of paragraphs (b)(8)(i)–(v) of this section. A vessel fishing with gillnet gear under a joint monkfish and NE multispecies DAS, as required under § 648.92(b)(2)(i), that is declared as a trip gillnet vessel under the NE Multispecies FMP, must remove its gillnet gear from the water prior to calling out of the DAS program, as specified at § 648.82(j)(2).

(9) *Category G and H limited access permit holders.*

(i) Vessels issued monkfish limited access Category G or H permits may only fish under a monkfish DAS in the area south of 38°40′ N. lat.

(ii) Vessels issued valid limited access monkfish Category G or H permit that also possess a limited access NE multispecies or limited access scallop permit are subject to the same provisions as Category C or D vessels, respectively, unless otherwise stated under this subpart F.

(c) *Monkfish Research*—(1) *DAS Set-Aside Program.* (i) NMFS will publish a Request for Proposals (RFP) in the FEDERAL REGISTER at least 3 months prior to the start of the upcoming fishing year, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Councils.

(ii) NMFS shall convene a review panel that may include members of the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other technical experts, to review proposals submitted in response to the RFP.

(A) Each panel member shall recommend which research proposals should be authorized to utilize the research DAS set aside in accordance with paragraph (b)(1)(iv) of this section, based on the selection criteria described in the RFP.

(B) The Regional Administrator shall consider each panel member's recommendation, provide final approval of the projects, and notify applicants of the grant award through written notification to the project proponent. The Regional Administrator may exempt selected vessel(s) from regulations specified in each of the respective FMPs throughthe exempted fishing permit (EFP) process specified under § 600.745(b)(2).

(iii) The grant awards approved under the RFPs shall be for the upcoming fishing year. Proposals to fund research that would start prior to the fishing year are not eligible for consideration. Multi-year grant awards may be approved under an RFP for an upcoming fishing year, so long as the research DAS available under subsequent RFPs are adjusted to account for the approval of multi-year awards. All research trips shall be completed within the fishing year(s) for which the research grant was awarded.

(iv) Research projects shall be conducted in accordance with provisions approved and provided in an EFP issued by the Regional Administrator, as authorized under § 600.745(b)(2).

(v) If the Regional Administrator determines that the annual allocation of

research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in paragraph (c)(2) of this section, and provide notice of the reallocation of DAS in the FEDERAL REGISTER. Any unused research DAS may not be carried over into the next fishing year.

(vi) For proposals that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(2) *DAS Exemption Program.* (i) Vessels that seek to conduct monkfish research within the current fishing year, and that were not selected in the RFP process during the previous fishing year, may seek exemptions from monkfish DAS for the purpose of conducting exempted fishing activities, as authorized at § 600.745(b), under the following conditions and restrictions:

(A) The request for a monkfish DAS exemption must be submitted along with a complete application for an EFP to the Regional Administrator. The requirements for submitting a complete EFP application are provided in § 600.745(b)(2);

(B) Exempted DAS must be available for usage. Exempted DAS shall only be made available by the Regional Administrator if it is determined that the annual set-aside of research DAS will not be used in its entirety, as described in paragraph (c)(1)(v) of this section. If exempted DAS are not available for usage, the applicant may continue to seek an exemption from monkfish DAS, but may be required to conduct an analysis of the impacts associated with the monkfish DAS exemption request before issuance of the EFP application will be considered; and

(C) For EFP applications that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(ii) Monkfish DAS exemption requests shall be reviewed and approved by the Regional Administrator in the order in which they are received.

[64 FR 54748, Oct. 7, 1999, as amended at 67 FR 50323, Aug. 1, 2002; 68 FR 4114, Jan. 28, 2003; 68 FR 22329, Apr. 28, 2003; 69 FR 18293, Apr. 7, 2004; 69 FR 22988, Apr. 27, 2004; 70 FR 21942, 22244, Apr. 28, 2005; 70 FR 76429, Dec. 27, 2005; 71 FR 23874, Apr. 25, 2006; 71 FR 62196, Oct. 23, 2006; 72 FR 53949, Sept. 21, 2007; 72 FR 73281, Dec. 27, 2007; 73 FR 22834, Apr. 28, 2008]

§ 648.93 Monkfish minimum fish sizes.

(a) *General provisions.* (1) All monkfish caught by vessels issued a valid Federal monkfish permit must meet the minimum fish size requirements established in this section.

MINIMUM FISH SIZES
(Total Length/Tail Length)

Total Length	Tail Length
17 inches (43.2 cm)	11 inches (27.9 cm)

(2) The minimum fish size applies to the whole fish (total length) or to the tail of a fish (tail length) at the time of landing. Fish or parts of fish, with the exception of cheeks and livers, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed. Monkfish tails are measured from the anterior portion of the fourth cephalic dorsal spine to the end of the caudal fin. Any tissue anterior to the fourth dorsal spine is ignored. If the fourth dorsal spine or the tail is not intact, the minimum size is measured between the most anterior vertebra and the most posterior portion of the tail.

(b) *Minimum fish size.* The minimum fish size for all vessels is 17 inches (43.2 cm) total length or 11 inches (27.9 cm) tail length.

[64 FR 54749, Oct. 7, 1999, as amended at 68 FR 22329, Apr. 28, 2003; 70 FR 21944, Apr. 28, 2005]

§ 648.94 Monkfish possession and landing restrictions.

(a) *General*. Monkfish may be possessed or landed either as tails only, or in whole form, or any combination of the two. When both tails and whole fish are possessed or landed, the possession or landing limit for monkfish tails shall be the difference between the whole weight limit minus the landing of whole monkfish, divided by 3.32. A 996 lb (452 kg) whole weight trip limit and a 600 lb (272 kg) landing of whole fish shall, for example, allow for a maximum landing of tails of 119.3 lb (54.1 kg).

(b) *Vessels issued limited access monkfish permits*—

(1) *Vessels fishing under the monkfish DAS program in the NFMA*—(i) *Category A and C vessels*. Limited access monkfish Category A and C vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 1,250 lb (567 kg) tail weight or 4,150 lb (1,882 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(ii) *Category B and D vessels*. Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 470 lb (213 kg) tail weight or 1,560 lb (708 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(2) *Vessels fishing under the monkfish DAS program in the SFMA*—(i) *Category A, C, and G vessels*. Limited access monkfish Category A, C, and G vessels that fish under a monkfish DAS in the SFMA may land up to 550 lb (249 kg) tail weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(ii) *Category B, D, and H vessels*. Limited access monkfish Category B, D, and H vessels that fish under a monkfish DAS in the SFMA may land up to 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(iii) *Category F vessels*. Vessels issued a Category F permit are subject to the possession and landing restrictions specified at § 648.95(g)(1).

(iv) *Administration of landing limits*. A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) through (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program*—(i) *NFMA*. Limited access monkfish Category C, D, F, G, or H vessels that are fishing under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section. Category C, D, F, G, and H vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA*—(A) *Category C, D, and F vessels*. Limited access monkfish Category C, D, or F vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not a monkfish DAS, may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip. Category C, D, and F vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(B) *Category G and H vessels*. Limited access monkfish Category G and H vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not under a monkfish DAS, are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to

the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

(4) *Category C, D, F, G, or H vessels fishing under the scallop DAS program.* A Category C, D, F, G, or H vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(5) *Category C, D, F, G, or H scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C, D, G, or H vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or that are not fishing with a net under the net exemption provision specified in § 648.51(f), are subject to the same landing limits as specified in paragraphs (b)(1) and (b)(2) of this section, or the landing limit specified in § 648.95(g)(1), if issued a Category F permit. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(6) *Vessels not fishing under a NE multispecies, scallop, or monkfish DAS.* The possession limits for all limited access monkfish vessels when not fishing under a NE multispecies, scallop, or monkfish DAS are the same as those possession limits applicable to a vessel issued a monkfish incidental catch permit specified under paragraphs (c)(3) through (c)(8) of this section.

(c) *Vessels issued a monkfish incidental catch permit*—(1) Vessels fishing under a NE multispecies DAS—(i) *NFMA.* Vessels issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, fishing under a NE multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) *SFMA.* If any portion of the trip is fished by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, under a NE multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor).

(2) *Scallop vessels fishing under a scallop DAS.* A scallop vessel issued a monkfish incidental catch (Category E) permit fishing under a scallop DAS, may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor).

(3) *Vessels fishing with large mesh and not fishing under a DAS*—(i) A vessel issued a valid monkfish incidental catch limit (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs with mesh no smaller than specified at § 648.80(a)(3)(i) and (a)(4)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(b)(2)(i), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not

to exceed 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA under a Skate Bait Letter of Authorization, as authorized under § 648.322(b), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(iv) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, but not to exceed 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish, unless that vessel is fishing under a Skate Bait Letter of Authorization in the SNE RMA. Such a vessel is subject to the incidental catch limit specified under paragraph (c)(3)(iii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(4) *Vessels fishing with small mesh and not fishing under a DAS.* A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip.

(5) *Small vessels.* A vessel issued a limited access NE multispecies small vessel category permit and a valid monkfish incidental catch (Category E) permit that is less than 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program, may possess, retain, and land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip.

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear.* A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, may possess, retain, and land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip.

(8) *Scallop vessels not fishing under a scallop DAS with dredge gear*—(i) *General provisions.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a valid General Category sea scallop permit or a limited access sea

scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge gear as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip, unless otherwise specified in paragraph (c)(8)(ii) of this section.

(ii) *Limited access scallop vessels fishing in Sea Scallop Access Areas*. A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a limited access sea scallop permit while fishing exclusively with scallop dredge gear as specified in § 648.51(b), and fishing in one of the established Sea Scallop Access Areas specified under § 648.59, may possess, retain, and land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per day or partial day fished within the boundaries of the Sea Scallop Access Area. Time within the applicable access area, for purposes of determining the incidental catch limit, will be determined through the vessel's VMS unit.

(d) *Monkfish liver landing restrictions*. (1) A vessel authorized to land monkfish under this part may possess or land monkfish livers up to 25 percent of the tail-weight of monkfish, or up to 10 percent of the whole weight of monkfish, per trip, except as provided under paragraph (d)(2) of this section.

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio:

$$(0.10) \times [(\text{tail weight} \times 3.32) + (\text{whole fish} \times 1)]$$

NOTE TO PARAGRAPH (d)(2): The value 3.32 is the live weight conversion for tails and the value of 1 is the live weight conversion for fish landed in a whole condition.

(e) *Transiting*. A vessel that has declared into the NFMA for the purpose of fishing for monkfish under the less restrictive measures of the NFMA, may transit the SFMA provided that the vessel does not harvest or possess monkfish, or any other fish, from the SFMA, and the vessel's gear is properly stowed and not available for immediate use in accordance with the regulations specified under § 648.23(b).

(f) *Area declaration requirement for a vessel fishing exclusively in the NFMA*. A vessel intending to fish for, or fishing for, possessing or landing monkfish under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish exclusively in the NFMA for the entire trip. In addition, a vessel fishing under a monkfish DAS must declare its intent to fish in the NFMA through the vessel's VMS unit. A vessel that is not required to and does not possess a VMS unit, such as a vessel that declares DAS through the call-in system, must declare its intent to fish in the NFMA by obtaining a letter of authorization from the Regional Administrator, for a period of not less than 7 days. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

(g) *Other landing restrictions*. Vessels are subject to any other applicable landing restrictions of this part.

[64 FR 54749, Oct. 7, 1999, as amended at 65 FR 11480, Mar. 3, 2000; 65 FR 37917, June 19, 2000; 68 FR 22330, Apr. 28, 2003; 69 FR 18293, Apr. 7, 2004; 69 FR 22988, Apr. 27, 2004; 70 FR 21944, 22244, Apr. 28, 2005; 71 FR 23874, Apr. 25, 2006; 72 FR 20959, Apr. 27, 2007; 72 FR 53942, Sept. 21, 2007; 72 FR 53950, Sept. 21, 2007; 73 FR 22835, Apr. 28, 2008]

§ 648.95 Offshore Fishery Program in the SFMA.

(a) *General*. Any vessel issued a valid monkfish limited access permit is eligible to apply for a Category F permit in order to fish in the Offshore Fishery Program in the SFMA.

(1) A vessel issued a Category F permit is subject to the specific provisions and conditions of this section while fishing on a monkfish DAS.

(2) When not fishing on a monkfish DAS, a Category F vessel may fish under the regulations applicable to the monkfish incidental catch (Category E) permit, specified under paragraph § 648.94(c). When fishing on a NE multispecies DAS in the NFMA, a Category F vessel that also possesses a NE multispecies limited access permit is subject to the possession limits applicable to vessels issued an incidental catch permit as described in § 648.94(c)(1)(i).

(3) Limited access Category C or D vessels that apply for and are issued a Category F permit remain subject to the provisions specific to Category C and D vessels, unless otherwise specified under this subpart F.

(b) *Declaration*. To fish in the Offshore Fishery Program, a vessel must obtain a monkfish limited access Category F permit and fish under this permit for the entire fishing year, subject to the conditions and restrictions specified under this part. The owner of a vessel, or authorized representative, may change the vessel's limited access monkfish permit category within 45 days of the effective date of the vessel's permit, provided the vessel has not fished under the monkfish DAS program during that fishing year. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel's permit category will remain unchanged for the duration of the fishing year.

(c) *Offshore Fishery Program Area*. The Offshore Fishery Program Area is bounded on the south by 38°00′ N. lat., and on the north, west, and east by the area coordinates specified in § 648.23(a).

(d) *Season*. October 1 through April 30 each year.

(e) *Restrictions*. (1) Except for the transit provisions provided for in paragraph (f) of this section, a vessel issued a valid Category F permit may only fish for, possess, and land monkfish in or from the Offshore Fishery Program Area while on a monkfish DAS.

(2) A vessel enrolled in the Offshore Fishery Program is restricted to fishing under its monkfish DAS during the season in paragraph (d) of this section.

(3) A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(i) and (c)(1)(iii), as well as the other gear requirements specified in paragraphs (c)(2) and (c)(3).

(4) A vessel issued a Category F permit must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 during the entire season established under paragraph (d) of this section. Unless otherwise required to maintain an operational VMS unit under the VMS notification requirements specified at § 648.10(b)(1), a vessel issued a Category F permit may turn off its VMS unit outside of this season.

(f) *Transiting*. A vessel issued a Category F permit and fishing under a monkfish DAS that is transiting to or from the Offshore Fishery Program Area, described in paragraph (c)(1) of this section, shall have all gear stowed and not available for immediate use in accordance with the gear stowage provisions specified under § 648.23(b).

(g) *Monkfish possession limits and DAS allocations*. (1) A vessel issued a Category F permit may land up to 1,600 lb (726 kg) tail weight or 5,312 lb (2,409 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail weight and whole weight based on the conversion factor of 3.32).

(2) The monkfish DAS allocation for vessels issued a Category F permit shall be equal to the trip limit applicable to the vessel's monkfish limited access permit category divided by the fixed daily possession limit specified in paragraph (g)(1) of this section, and then multiplied by the DAS allocation for limited access monkfish vessels not issued Category F permits, specified under § 648.92(b)(1). For example, if a vessel has a limited access monkfish Category C permit, and the applicable trip limit is 800 lb (363 kg) for this category, and the vessel has an annual allocation of 40 monkfish DAS, then the monkfish DAS allocated to that vessel when issued a Category F permit would be 20 monkfish DAS (800 lb divided by 1,600 lb, multiplied by 40 monkfish DAS equals 20 DAS). Any carryover monkfish DAS will be included in the

calculation of monkfish DAS for Category F vessels.

(3) Vessels issued a Category F permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(h) *DAS usage by NE multispecies or sea scallop limited access permit holders.* A vessel issued a Category F permit that also has been issued either a NE multispecies or sea scallop limited access permit, and is fishing on a monkfish DAS, is subject to the DAS usage requirements specified in § 648.92(b)(2).

[70 FR 21945, Apr. 28, 2005, as amended at 72 FR 20960, Apr. 27, 2007; 72 FR 53942, Sept. 21, 2007]

§ 648.96 Monkfish annual adjustment process and framework specifications.

(a) *General.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year in accordance with paragraph (b)(1) of this section, and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports), or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(b) *Annual Adjustment Procedures*—(1) *Annual Target TACs for FY 2007 through FY 2009*—(i) *NFMA.* The annual target TAC for the NFMA is 5,000 mt for FY 2007 through FY 2009, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, and adopted through the procedures outlined in paragraph (b)(4) of this section.

(ii) *SFMA.* The annual target TAC for the SFMA is 5,100 mt for FY 2007 through FY 2009, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, and adopted through the procedures outlined in paragraph (b)(4) of this section.

(2) *Annual Target TACS for FY 2010 and beyond.* If a regulatory action is not implemented to establish target TACs for the monkfish fishery for FY 2010 or subsequent years, either through the annual review procedure described in paragraph (a) of this section or another type of regulatory action, the target TACs in effect during FY 2007 - FY 2009 will remain in effect until new measures are implemented. The management measures for FY 2010 or subsequent years that would be associated with these target TACs are described in paragraph (b)(6) of this section.

(3) *Setting DAS allocations*—(i) The process of determining the appropriate DAS allocations for each management area involves first estimating incidental landings for each management area and then estimating the proportional catch for permit categories A and C, and permit categories B, D, and H based upon vessel trip reports for the most recently completed fishing year for which a complete set of landings data exists. The landings proportions generated for each permit category group (A and C versus B, D, and H) are then used to estimate the landings that would be associated with each permit category group under a given target TAC, less projected incidental landings. For example, a target TAC of 5,100 mt equates to 11,243,580 lb (5,100,000 kg). If incidental landings for the SFMA are projected to be 2,070,000 lb (938,936 kg) the total amount of the target TAC available to limited access vessels would be 9,173,580 lb (4,161,066 kg). If the proportion of landings for permit category A and C vessels is 37 percent, and the proportion for permit category B, C, and H vessels is 63 percent, then the landing levels associated with each permit category group under this target TAC would be 3,394,225 lb (1,539,595 kg) and 5,779,355 lb (2,621,471 kg), respectively.

(ii) Landings are assumed to be fixed at a constant rate per day for each vessel, equivalent to the average daily landings of each vessel in the reference year, of the last applicable full year of landings data (a year is applicable if

the TAC in that year was lower than the TAC in the year to be calculated).

(iii) To adjust for the ability of vessels to carryover up to 10 unused monkfish DAS from the previous fishing year to the current fishing year, adjustments to DAS usage shall be made by first reducing the landings for all permit holders who have used more than the annual DAS allocation specified in § 648.94(b)(1)(i) (e.g., 31 monkfish DAS) by the proportion of DAS exceeding that annual DAS allocation, and then resetting the upper limit of DAS usage at the annual DAS allocation.

(iv) Linear interpolation is then used to determine which DAS level would closest achieve the estimated landing levels for each permit category group under a given target TAC.

(4) *Council TAC Recommendations.* The Councils shall consider any target TAC(s) recommended by the MFMC as part of its annual review specified in paragraph (a) of this section, and then forward their target TAC recommendation to the Regional Administrator. If the Councils recommend target TAC(s) to the Regional Administrator, and the Regional Administrator concurs with this recommendation, the Regional Administrator shall promulgate the target TAC(s) and associated management measures through rulemaking consistent with the APA. If the Regional Administrator does not concur with the Councils' recommendation, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(5) *Annual review process.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop options for the upcoming fishing year, as needed, and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports), or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(6) *Management measures for FY 2010 and beyond.* If a regulatory action is not implemented to establish management measures for the monkfish fishery for FY 2010 or subsequent years, either through the annual review process or another type of regulatory action, the management measures in effect during FY 2009 (i.e., trip limits and DAS allocations) will remain in effect until new measures are implemented, with the following exception. If the monkfish DAS allocation is reduced to zero in either management area during FY 2009 as a result of the target TAC overage provision described in paragraph (b)(3) of this section, the annual DAS allocation and associated trip limits for that management area for FY 2010 and beyond will be equivalent to the annual monkfish DAS allocation and trip limits in effect during FY 2008, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, or superceded by a subsequent regulatory action.

(c) *Annual and in-season framework adjustments to management measures*—(1) *Annual framework process.* (i) Based on their annual review, the MFMC may develop and recommend, in addition to the target TACs and management measures established under paragraph (b) of this section, other options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: Closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits

and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and other frameworkable measures included in §§ 648.55 and 648.90.

(ii) The Councils shall review the options developed by the MFMC and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MFMC. The oversight committee would review the options developed by the MFMC and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils do not submit a recommendation that meets the Monkfish FMP's goals and objectives, and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC, unless rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils.

(iii) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework meeting, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the FEDERAL REGISTER as a proposed rule. The FEDERAL REGISTER notification of the proposed action shall provide a public comment period in accordance with the Administrative Procedure Act. The Councils may instead submit their recommendation on or before February 1, if they choose to follow the framework process outlined in paragraph (c)(3) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action shall be published as a final rule in the FEDERAL REGISTER. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP's goals and objectives, is consistent with other applicable law, and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year, fishing may continue. However, DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that year.

(iv) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the FEDERAL REGISTER prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(2) *In-season Action.* At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' Chairmen) may initiate action to add or adjust management measures, if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP. Recommended adjustments to management measures must come from the categories specified under paragraph (c)(1)(i) of this section. In addition, the procedures for framework adjustments specified under paragraph (c)(3) of this section must be followed.

(3) *Framework Adjustment Procedures.* Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(i) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(A) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(B) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(C) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(D) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(ii) *Action by NMFS.* (A) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(B) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the FEDERAL REGISTER.

(C) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(iii) *Adjustments for gear conflicts.* The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

(d) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take

emergency action under section 305(c) of the Magnuson-Stevens Act.

[64 FR 54751, Oct. 7, 1999, as amended at 68 FR 22330, Apr. 28, 2003; 68 FR 36947, June 20, 2003; 70 FR 21946, Apr. 28, 2005; 72 FR 20960, Apr. 27, 2007; 72 FR 53942, Sept. 21, 2007; 72 FR 53951, Sept. 21, 2007; 73 FR 4755, Jan. 28, 2008]

EFFECTIVE DATE NOTE: At 73 FR 52636, Sept. 10, 2008, § 648.96 was amended by removing and reserving paragraph (b)(5) and revisi paragraph (b)(10), effective Oct. 10, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 648.96 Monkfish annual adjustment process and framework specifications.

* * * * *

(b) * * *

(6) *Management measures for FY 2010 and beyond*. If a regulatory action is not implemented to establish management measures for the monkfish fishery for FY 2010 or subsequent years, the management measures in effect during FY 2009 (i.e., trip limits and DAS allocations) shall remain in effect.

* * * * *

§ 648.97 Closed areas.

(a) *Oceanographer Canyon Closed Area*. No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Oceanographer Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

OCEANOGRAPHER CANYON CLOSED AREA

Point	N. Lat.	W. Long.
(1) OC1	40°10′	68°12′
(2) OC2	40°24′	68°09′
(3) OC3	40°24′	68°08′
(4) OC4	40°10′	67°59′
(5) OC1	40°10′	68°12′

(b) *Lydonia Canyon Closed Area*. No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Lydonia Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

LYNDONIA CANYON CLOSED AREA

Point	N. Lat.	W. Long.
(1) LC1	40°16′	67°34′
(2) LC2	40°16′	67°42′
(3) LC3	40°20′	67°43′
(4) LC4	40°27′	67°40′
(5) LC5	40° 27′	67°38′
(6) LC1	40°16′	67°34′

[70 FR 21946, Apr. 28, 2005]

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Catch quotas and other restrictions.

(a) *Review*. The Summer Flounder Monitoring Committee shall review each year the following data, subject to availability, unless a TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the annual allowable levels of fishing and other restrictions necessary to achieve, with at least a 50–percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit (Fmax): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures on an annual basis*. Based on this review and requests for research quota as described in paragraph (f) of this section, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to ensure, with at

least a 50-percent probability of success, that the F specified in paragraph (a) of this section will not be exceeded:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified F.

(2) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F, set after reductions for research quota.

(3) Commercial minimum fish size.

(4) Minimum mesh size.

(5) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F, set after reductions for research quota.

(6) Recreational minimum fish size.

(7) Recreational season.

(8) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(9) Restrictions on gear other than otter trawls.

(10) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraph (a) of this section, to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(12) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(c) *Fishing measures*. The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission.

(d) *Commercial measures*. After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a coastwide commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded.

(1) *Distribution of annual quota*. (i) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(ii) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas. The overage deduction will be based on landings for the current year through October 31, and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of

an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish a notice in the FEDERAL REGISTER announcing such restoration.

(2) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(3) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson-Stevens Act.

(4) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(5) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(6) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(e) *Recreational measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and Commission measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Council and the Commission will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* Individual states or regions formed voluntarily by adjacent states (i.e., multi-

state conservation equivalency regions) may implement different combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of Marine Recreational Fisheries Statistics Survey (MRFSS) landings estimates by mode or area for that state are less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER on or about March 1 to implement the overall percent adjustment in recreational landings required for the fishing year, the Council and Commission's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) During the public comment period on the proposed rule, the Commission will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The Commission will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

(iii) The Commission may allow states assigned the precautionary default measures to resubmit revised management measures. The Commission will detail the procedures by which the state can develop alternate measures. The Commission will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the FEDERAL REGISTER to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(f) *Research quota*. See § 648.21(g).

[66 FR 36211, July 11, 2001, as amended at 66 FR 42160, Aug. 10, 2001; 67 FR 6880, Feb. 14, 2002; 67 FR 50372, Aug. 2, 2002; 69 FR 62821, Oct. 28, 2004; 70 FR 310, Jan. 4, 2005; 70 FR 53970, Sept. 13, 2005; 71 FR 42317, July 26, 2006; 73 FR 4755, Jan. 28, 2008]

§ 648.101 Closures.

(a) *EEZ closure*. The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.100(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas*. The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

§ 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from May 23 through September 1. This time period may be adjusted pursuant to the procedures in § 648.100.

[67 FR 50372, Aug. 2, 2002, as amended at 73 FR 29999, May 23, 2008]

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4 (a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19–inch (48.26–cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller that the size specified if all state requirements are met.

[61 FR 34968, July 3, 1996, as amended at 62 FR 10478, Mar. 7, 1997; 62 FR 37157, July 11, 1997; 62 FR 63875, Dec. 3, 1997; 63 FR 27868, May 21, 1998; 66 FR 39291, July 30, 2001; 67 FR 50372, Aug. 2, 2002; 73 FR 29999, May 23, 2008]

§ 648.104 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5–inch (14.0–cm) diamond or 6.0–inch (15.2–cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0′ W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.104(e), so that it is not ''available for immediate use'' outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the FEDERAL REGISTER terminating the exemption for the remainder of the exemption season.

(i) *Requirements.* (A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be in enrolled in the exemption program for a minimum of 7 days.

(ii) [Reserved]

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other

nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish a notice in the FEDERAL REGISTER terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in § 648.104(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 648.100(a).

(d) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (c) of this section, that obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not ''available for immediate use.''

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.100.

[61 FR 34968, July 3, 1996, as amended at 62 FR 63876, Dec. 3, 1997; 69 FR 62821, Oct. 28, 2004; 70 FR 35046, June 16, 2005; 71 FR 42318, July 26, 2006; 72 FR 8289, Feb. 26, 2007]

§ 648.105 Possession restrictions.

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than two summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued

a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.100.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.104(e), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, unless the vessel possesses a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in § 648.104(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in^3 (2.5 ft^3 or 70.79 cm^3).

[61 FR 34968, July 3, 1996, as amended at 62 FR 37157, July 11, 1997; 63 FR 27868, May 21, 1998; 66 FR 39292, July 30, 2001; 67 FR 50372, Aug. 2, 2002; 68 FR 44236, July 28, 2003; 69 FR 62822, Oct. 28, 2004; 73 FR 29999, May 23, 2008]

§ 648.106 Sea Turtle conservation.

Sea turtle regulations are found at 50 CFR parts 222 and 223.

[64 FR 57595, Oct. 26, 1999]

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2008 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting summer flounder in or from the EEZ and subject to the recreational fishing measures of this part, landing summer flounder in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season - July 4 through September 1;

minimum size - 20.0 inches (50.80 cm); and possession limit - two fish.

[67 FR 50372, Aug. 2, 2002, as amended at 68 FR 44236, July 28, 2003; 69 FR 53840, Sept. 3, 2004; 70 FR 35046, June 16, 2005; 71 FR 29256, May 22, 2006; 71 FR 42318, July 26, 2006; 72 FR 30497, June 1, 2007; 73 FR 29999, May 23, 2008; 73 FR 29999, May 23, 2008]

§ 648.108 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs), any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, if after reviewing the Council's recommendation and supporting information:

(i) NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors

specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule and published in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[64 FR 57595, Oct. 26, 1999, as amended at 73 FR 4755, Jan. 28, 2008]

Subpart H—Management Measures for the Scup Fishery

SOURCE: 61 FR 43426, Aug. 23, 1996, unless otherwise noted.

§ 648.120 Catch quotas and other restrictions.

(a) *Review.* The Scup Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas: Commercial, recreational, and research data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; discards; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit (F_{max}).

(b) *Recommended measures.* Based on this review and requests for research quota as described in paragraph (e) of this section, the Scup Monitoring Committee shall recommend the following measures to the Demersal Species Committee of the MAFMC and the Commission to ensure that the exploitation rate specified in paragraph (a) of this section will not be exceeded:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

(2) The commercial quota for each of the three periods specified in paragraph (d)(1) of this section, to be set from a range of 0 to the maximum allowed to achieve the specified exploitation rate, set after the deduction for research quota. The commercial quota will be established by estimating the annual total allowable catch (TAC), allocating it into the three periods, and deducting the discard estimates for each period.

(3) Possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24–hour period (calendar day).

(4) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(5) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (d)(5) of this section.

(6) Minimum mesh size.

(7) Recreational possession limit set from a range of 0 to 50 scup to achieve the specified exploitation rate, set after the reduction for research quota.

(8) Recreational minimum fish size set from a range of 7 inches (17.8 cm) TL to 10 inches (25.4 cm) TL.

(9) Recreational season.

(10) Restrictions on gear.

(11) Season and area closures in the commercial fishery.

(12) Total allowable landings on an annual basis for a period not to exceed 3 years.

(13) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(c) *Fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule to implement a commercial quota in the FEDERAL REGISTER, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the specified exploitation rate will not be exceeded, he or she will publish a proposed rule in the FEDERAL REGISTER to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement annual measures.

(d) *Distribution of Commercial Quota.* (1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January-April	45.11
Summer—May-October	38.95
Winter II—November-December	15.94

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) The Regional Administrator will monitor the harvest of commercial quota for the Winter I period based on dealer reports, state data, and other available information and shall determine the total amount of scup landed during the Winter I period. In any year that the Regional Administrator determines that the landings of scup during Winter I are less than the Winter I quota for that year, he/she shall increase, through publication of a notification in the FEDERAL REGISTER, provided such rule complies with the requirements of the Administrative Procedure Act, the Winter II quota for that year by the amount of the Winter I underharvest. The Regional Administrator shall also adjust, through publication of a notification in the FEDERAL REGISTER, the Winter II possession limits consistent with the amount of the quota increase, based on the possession limits established through the annual specifications-setting process.

(4) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (d)(5) of this section. Any current year landings in excess of the commercial quota in any quota period will be deducted from that quota period's annual quota in the following year as prescribed below:

(i) For the Winter I and Summer quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through October 31, and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the period quotas for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the

appropriate quota allocation. The Regional Administrator will publish a notice in the FEDERAL REGISTER announcing the restoration.

(ii) For the Winter II quota period, landings in excess of the allocation will be deducted from the Winter II period for the following year in a notice published in the FEDERAL REGISTER during July of the following year. The overage deduction will be based on landings information available for the Winter II period as of June 30 of the following year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish a notice in the FEDERAL REGISTER announcing the restoration.

(5) During a fishing year in which the Winter I quota period is closed prior to April 15, a state may apply to the Regional Administrator for authorization to count scup landed for sale in that state from April 15 through April 30 by state-only permitted vessels fishing exclusively in waters under the jurisdiction of that state against the Summer period quota. Requests to the Regional Administrator to count scup landings in a state from April 15 through April 30 against the Summer period quota must be made by letter signed by the principal state official with marine fishery management responsibility and expertise, or his/her designee, and must be received by the Regional Administrator no later than April 15. Within 10 working days following receipt of the letter, the Regional Administrator shall notify the appropriate state official of the disposition of the request.

(e) *Research quota*. See § 648.21(g).

[61 FR 43426, Aug. 23, 1996, as amended at 62 FR 27984, May 22, 1997; 65 FR 33497, May 24, 2000; 66 FR 12911, Mar. 1, 2001; 66 FR 42161, Aug. 10, 2001; 66 FR 45187, Aug. 28, 2001; 67 FR 6880, Feb. 14, 2002; 68 FR 62253, Nov. 3, 2003; 69 FR 62822, Oct. 28, 2004; 70 FR 310, Jan. 4, 2005; 73 FR 4756, Jan. 28, 2008]

§ 648.121 Closures.

(a) *Period closures*. The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the FEDERAL REGISTER advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) [Reserved]

[62 FR 27985, May 22, 1997, as amended at 65 FR 33497, May 24, 2000]

§ 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area*—(1) *Restrictions*. From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	39°20′	72°53′
SGA2	39°20′	72°28′
SGA3	38°00′	73°58′
SGA4	37°00′	74°43′
SGA5	36°30′	74°43′
SGA6	36°30′	75°03′
SGA7	37°00′	75°03′
SGA8	38°00′	74°23′
SGA1	39°20′	72°53′

(2) *Non-exempt species*. Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply

only to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: *Loligo* squid, black sea bass and silver hake (whiting).

(b) *Northern Gear Restricted Area I*—(1) *Restrictions*. From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, 5.0-inch (12.7 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA I

Point	N. lat.	W. long
NGA1	41°00′	71°00′
NGA2	41°00′	71°30′
NGA3	40°00′	72°40′
NGA4	40°00′	72°05′
NGA1	41°00′	71°00′

(2) *Non-exempt species*. Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply only to vessels in the Northern Gear Restricted Area I that are fishing for, or in possession of, the following non-exempt species: *Loligo* squid, black sea bass and silver hake (whiting).

(c) *Transiting*. Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) [Reserved]

(e) *Addition or deletion of exemptions*. The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.108(a), additions or deletions to exemptions for fisheries other than scup. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup.

(f) *Exempted experimental fishing*. The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area, use fishing gear that does not conform to the regulations, possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section, or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

(g) *Time restrictions*. Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through the last day of February, and from October 1 through October 31.

This time period may be adjusted pursuant to the procedures in § 648.120.

[65 FR 33497, May 24, 2000, as amended at 65 FR 81765, Dec. 27, 2000; 66 FR 12911, Mar. 1, 2001; 66 FR 39292, July 30, 2001; 67 FR 50372, Aug. 2, 2002; 68 FR 68, Jan. 2, 2003; 68 FR 12814, Mar. 18, 2003; 68 FR 44236, July 28, 2003; 69 FR 41983, July 13, 2004; 70 FR 311, Jan. 4, 2005; 70 FR 35046, June 16, 2005; 73 FR 29999, May 23, 2008]

§ 648.123 Gear restrictions.

(a) *Trawl vessel gear restrictions*—(1) *Minimum mesh size*. No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. Scup on board these vessels must be stowed separately and kept readily available for inspection. Measurement of nets will be in conformity with § 648.80(f)(2)(ii).

(2) *Mesh-size measurement*. Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification*. The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater that 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes are not considered part of the top of the regulated portion of a trawl net.

(4) *Mesh obstruction or constriction*. (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.122 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets*. The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed in conformance with one of the methods specified in § 648.23 (b), and that can be shown not to have been in recent use, is considered to be not available for immediate use.

(6) *Roller gear*. The owner or operator of an otter trawl vessel issued a moratorium permit pursuant to § 648.4(a)(6) shall not use roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

(7) *Procedures for changes.* The minimum net mesh and the threshold catch level at which it is required set forth in paragraph (a)(1) of this section, and the maximum roller diameter set forth in paragraph (a)(6) of this section, may be changed following the procedures in § 648.120.

(b) *Pot and trap gear restrictions.* Owners or operators of vessels subject to this part must fish with scup pots or traps that comply with the following:

(1) *Degradable hinges.* A scup pot or trap must have degradable hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(2) *Escape vents.* (i) All scup pots or traps that have a circular escape vent with a minimum of 3.1 inches (7.9 cm) in diameter, or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side, or an equivalent rectangular escape vent.

(ii) The minimum escape vent size set forth in paragraph (b)(2)(i) of this section may be revised following the procedures in § 648.120.

(3) *Pot and trap identification.* Pots or traps used in fishing for scup must be marked with a code of identification that may be the number assigned by the Regional Administrator and/or the identification marking as required by the vessel's home port state.

[61 FR 43426, Aug. 23, 1996, as amended at 61 FR 56126, Oct. 31, 1996; 62 FR 12107, Mar. 14, 1997; 63 FR 72215, Dec. 31, 1998; 65 FR 33498, May 24, 2000; 66 FR 12911, Mar. 1, 2001; 66 FR 66357, Dec. 26, 2001; 69 FR 16179, Mar. 29, 2004; 70 FR 311, Jan. 4, 2005; 70 FR 35046, June 16, 2005]

§ 648.124 Minimum fish sizes.

(a) The minimum size for scup is 9 inches (22.9 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(6). If such a vessel is also issued a charter and party boat permit and is carrying passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat, then the minimum size specified in paragraph (b) of this section applies.

(b) The minimum size for scup is 10.5 inches (26.67 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.120.

[61 FR 43426, Aug. 23, 1996, as amended at 66 FR 39292, July 30, 2001; 67 FR 50373, Aug. 2, 2002; 73 FR 29999, May 23, 2008]

§ 648.125 Possession limit.

(a) No person shall possess more than 15 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.120.

(b) If whole scup are processed into fillets, an authorized officer will convert the number of fillets to whole scup at the place of landing by dividing fillet number by 2. If scup are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole scup.

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and

crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Scup and scup parts harvested by a vessel with a moratorium or charter or party boat scup permit, or in or from the EEZ north of 35°15.3′ N. lat., may not be landed with the skin removed.

[61 FR 43426, Aug. 23, 1996, as amended at 66 FR 39292, July 30, 2001; 67 FR 50373, Aug. 2, 2002; 68 FR 44236, July 28, 2003; 73 FR 30000, May 23, 2008]

§ 648.126 Protection of threatened and endangered sea turtles.

This section supplements existing regulations issued to regulate incidental take of sea turtles under authority of the Endangered Species Act under 50 CFR parts 222 and 223. In addition to the measures required under those parts, NMFS will investigate the extent of take in flynet gear and if deemed appropriate, may develop and certify a Turtle Excluder Device for that gear.

[61 FR 43426, Aug. 23, 1996, as amended at 64 FR 14077, Mar. 23, 1999]

§ 648.127 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.108(a).

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear restricted areas, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

(2) *Council recommendation.* See § 648.108(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.108(a)(i) through (iii).

(4) *Emergency actions.* See § 648.108(a)(4).

(b) [Reserved]

[64 FR 57595, Oct. 26, 1999, as amended at 64 FR 66587, Nov. 29, 1999; 72 FR 40080, July 23, 2007]

Subpart I—Management Measures for the Black Sea Bass Fishery

SOURCE: 61 FR 58467, Nov. 15, 1996, unless otherwise noted.

§ 648.140 Catch quotas and other restrictions.

(a) *Review.* The Black Sea Bass Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 23 percent (based on Fmax) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing

mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) *Recommended measures.* Based on this review and requests for research quota as described in paragraph (e) of this section, the Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the Council and the Commission the following measures to ensure that the target exploitation rate specified in paragraph (a) of this section is not exceeded:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

(2) A commercial quota allocated annually, set from a range of zero to the maximum allowed to achieve the specified target exploitation rate, set after the deduction for research quota.

(3) A commercial possession limit for all moratorium vessels may be set from a range of zero to the maximum allowed to assure that the annual coastwide quota is not exceeded, with the provision that these quantities be the maximum allowed to be landed within a 24–hour period (calendar day).

(4) Commercial minimum fish size.

(5) Minimum mesh size in the codend or throughout the net and the catch threshold that will require compliance with the minimum mesh requirement.

(6) Escape vent size.

(7) A recreational possession limit set from a range of 0 to the maximum allowed to achieve the target exploitation rate, set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season. This measure may be adjusted beginning in 1998.

(10) Restrictions on gear other than otter trawls and pots or traps.

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(12) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(c) *Fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the Commission. After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the target exploitation rate specified in paragraph (a) of this section will not be exceeded, he or she will publish a proposed rule in the FEDERAL REGISTER to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded.

(d) *Distribution of annual quota.* (1) Beginning on March 31, 2003, a commercial annual coastwide quota will be allocated to the commercial black sea bass fishery.

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3′ N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters will be counted against the quota by the state in which it is landed, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3′ N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the FEDERAL REGISTER advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3′ N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission.

(3) Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing the restoration.

(e) *Research quota.* See § 648.21(g).

[61 FR 58467, Nov. 15, 1996, as amended at 66 FR 12911, Mar. 1, 2001; 66 FR 42161, Aug. 10, 2001; 67 FR 6881, Feb. 14, 2002; 68 FR 10183, Mar. 4, 2003; 69 FR 62822, Oct. 28, 2004; 70 FR 311, Jan. 4, 2005; 73 FR 4756, Jan. 28, 2008]

§ 648.141 Closure.

EEZ closure. The Regional Administrator shall close the EEZ to fishing for black sea bass by commercial vessels issued a moratorium permit for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he or she determines that the action or inaction of one or more states will cause the applicable target exploitation rate specified in § 648.140(a) to be exceeded. The Regional Administrator may reopen the EEZ if earlier action or inaction by a state has been remedied by that state without causing the applicable specified target exploitation rate to be exceeded.

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit may possess black sea bass from January 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

[70 FR 35046, June 16, 2005]

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4 (a)(7) that fish for, possess, land or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35′ 15.3 N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.140.

(b) The minimum size for black sea bass is 12 inches (30.5 cm) TL for all

vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

(c) The minimum size in this section applies to the whole fish or any part of a fish found in possession (e.g., fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

[61 FR 58467, Nov. 15, 1996, as amended at 63 FR 27868, May 21, 1998; 66 FR 39292, July 30, 2001; 66 FR 66357, Dec. 26, 2001; 67 FR 50373, Aug. 2, 2002; 68 FR 44236, July 28, 2003]

§ 648.144 Gear restrictions.

(a) *Trawl gear restrictions*—(1) *General.* (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5 inch (11.43-cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5 inch (11.43-cm) diamond mesh throughout.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum established pursuant to paragraph (a)(1)(i) of this section.

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets.* Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use, is considered to be not ''available for immediate use.''

(5) *Roller gear.* Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions*—(1) *Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG documentation number or state registration number.

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.49 cm by 14.61 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a square vent with sides of 2 inches (5.1 cm), inside measure; however, black sea bass traps constructed of wooden laths may have instead escape vents constructed by leaving spaces of at least 1.375 inches (3.49 cm) between two sets of laths in the parlor portion of the trap. These dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

(3) *Ghost panel.* Black sea bass traps or pots must contain a ghost panel affixed to the trap or pot with degradable fasteners and hinges. The opening to be covered by the ghost panel must measure at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm). The ghost panel must be affixed to the pot or trap with hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

[61 FR 58467, Nov. 15, 1996, as amended at 62 FR 25138, May 8, 1997; 62 FR 66310, Dec. 18, 1997; 66 FR 66357, Dec. 26, 2001; 70 FR 77067, Dec. 29, 2005]

§ 648.145 Possession limit.

(a) No person shall possess more than 25 black sea bass in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.140.

(b) If whole black sea bass are processed into fillets, an authorized officer will convert the number of fillets to whole black sea bass at the place of landing by dividing fillet number by two. If black sea bass are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole black sea bass.

(c) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4 (a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144 (a)(4), may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100–lb (45.4 kg) tote.

[61 FR 58467, Nov. 15, 1996, as amended at 63 FR 11160, Mar. 6, 1998; 66 FR 39292, July 30, 2001; 66 FR 66358, Dec. 26, 2001]

§ 648.146 Special management zones.

The recipient of a Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the Council as a special management zone (SMZ). The SMZ will prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish

attraction device or other habitat modification. The establishment of an SMZ will be effected by a regulatory amendment pursuant to the following procedure:

(a) A SMZ monitoring team comprised of members of staff from the Mid-Atlantic FMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report considering the following criteria:

(1) Fairness and equity.

(2) Promotion of conservation.

(3) Avoidance of excessive shares.

(4) Consistency with the objectives of Amendment 9 to the Fishery Management Plan for the Summer Flounder, Scup and Black Sea Bass fisheries, the Magnuson-Stevens Act, and other applicable law.

(5) The natural bottom in and surrounding potential SMZs.

(6) Impacts on historical uses.

(b) The Council Chairman may schedule meetings of Industry Advisors and/or the Scientific and Statistical Committee to review the report and associated documents and to advise the Council. The Council Chairman may also schedule public hearings.

(c) The Council, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that a SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(d) The Regional Administrator will review the Council's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the FEDERAL REGISTER in accordance with the recommendations. If the Regional Administrator rejects the Council's recommendation, he or she shall advise the Council in writing of the basis for the rejection.

(e) The proposed rule shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the administrative record and consistent with the Magnuson-Stevens Act and other applicable law.

§ 648.147 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.108(a).

(1) *Adjustment process.* See § 648.108(a)(1).

(2) *Council recommendation.* See § 648.108(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.108(a)(i) through (iii).

(4) *Emergency actions.* See § 648.108(a)(4).

(b) [Reserved]

[64 FR 57595, Oct. 26, 1999, as amended at 64 FR 66587, Nov. 29, 1999]

Subpart J—Management Measures for the Atlantic Bluefish Fishery

SOURCE: 65 FR 45852, July 26, 2000, unless otherwise noted.

§ 648.160 Catch quotas and other restrictions.

The fishing year is from January 1 through December 31.

(a) *Annual review.* On or before August 15 of each year, the Bluefish Monitoring Committee will meet to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve the target fishing mortality rate (F) specified in the Fishery Management Plan for Atlantic Bluefish for the upcoming fishing year or the estimated F for the fishing year preceding the Council submission of the recommended specifications, whichever F is lower. In determining the TAL and other restrictions necessary to achieve the specified F, the Bluefish Monitoring Committee will review the following data, subject to availability: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of

bluefish; and any other relevant information.

(b) *Recommended measures*. Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to ensure that the F specified in paragraph (a) of this section will not be exceeded:

(1) A TAL set from a range of 0 to the maximum allowed to achieve the specified F.

(2) Research quota set from a range of 0 to 3 percent of TAL.

(3) Commercial minimum fish size.

(4) Minimum mesh size.

(5) Recreational possession limit set from a range of 0 to 20 bluefish to achieve the specified F.

(6) Recreational minimum fish size.

(7) Recreational season.

(8) Restrictions on gear other than otter trawls and gill nets.

(9) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(c) *Allocation of TAL*—(1) *Recreational harvest limit*. A total of 83 percent of the TAL will be allocated to the recreational fishery as a harvest limit. If research quota is specified as described in paragraph (h) of this section, the recreational harvest limit will be based on the TAL remaining after the deduction of the research quota.

(2) *Commercial quota*. A total of 17 percent of the TAL will be allocated to the commercial fishery as a quota. If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. If research quota is specified as described in paragraph (h) of this section, the commercial quota will be based on the TAL remaining after the deduction of the research quota.

(d) *Annual fishing measures*. The Council's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the Council measures necessary to ensure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to ensure that the applicable specified F will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER on or about October 15, to implement a research quota, a coastwide commercial quota, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to ensure that the applicable specified F will not be exceeded. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER.

(e) *Distribution of annual commercial quota*. (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Percentage
ME	0.6685
NH	0.4145
MA	6.7167
RI	6.8081
CT	1.2663
NY	10.3851
NJ	14.8162
DE	1.8782
MD	3.0018
VA	11.8795
NC	32.0608
SC	0.0352
GA	0.0095
FL	10.0597
TOTAL	100.0000

NOTE: The "Total" does not actually add up to 100.0000 because of rounding error.

(2) All bluefish landed for sale in a state shall be applied against that

state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the FEDERAL REGISTER.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (e)(1) of this section.

(g) Based upon any changes in the landings data available from the states for the base years 1981-89, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (e)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(h) *Research quota.* See § 648.21(g).

[65 FR 45852, July 26, 2000, as amended at 66 FR 42162, Aug. 10, 2001; 70 FR 53970, Sept. 13, 2005; 73 FR 4756, Jan. 28, 2008]

§ 648.161 Closures.

(a) *EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if the Regional Administrator determines that the inaction of one or more states will cause the applicable F specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has

been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas*. The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

§ 648.162 Minimum fish sizes.

If the Council determines through its annual review or framework adjustment process that minimum fish sizes are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objective, such measures will be enacted through the procedure specified in § 648.160(d) or 648.165.

§ 648.163 Gear restrictions.

If the Council determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in §§ 648.160(d) or 648.165.

§ 648.164 Possession restrictions.

(a) No person shall possess more than 15 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

[65 FR 45852, July 26, 2000, as amended at 66 FR 23627, May 9, 2001]

§ 648.165 Framework specifications.

(a) *Within season management action*. The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process*. After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports and/or industry-funded observers or observer set-aside programs), and any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Council's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[65 FR 45852, July 26, 2000, as amended at 73 FR 4756, Jan. 28, 2008]

Subpart K–Management Measures for the Atlantic Herring Fishery

SOURCE: 72 FR 11277, Mar. 12, 2007, unless otherwise noted.

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), reserve (if any), and the amount to be set aside for the RSA (from 0 to 3 percent of the TAC from any management area). The PDT and PRT shall also recommend the total allowable catch (TAC) for each management area and sub-area, including seasonal quotas as specified at § 648.201(f). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

(1) The PDT shall meet with the Commission's PRT to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report at least

every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3-year review and preparing a SAFE Report, the PDT/PRT will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming 3 years.

(2) If the Council determines, based on information provided by the PDT/PRT or other stock-related information, that the specifications should be adjusted during the 3-year time period, it can do so through the same process outlined in this section during one or both of the interim years.

(b) *Guidelines*. As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OY must be equal to or less than the allowable biological catch (ABC), as adjusted by subtracting an estimate of the expected Canadian New Brunswick fixed gear and GB herring catch.

(2) OY must not exceed MSY, unless an OY that exceeds MSY in a specific year is consistent with a control rule that ensures the achievement of MSY and OY on a continuing basis.

(3) Factors to be considered in assigning an amount, if any, to the reserve shall include:

(i) Uncertainty and variability in the estimates of stock size and ABC;

(ii) Uncertainty in the estimates of Canadian harvest from the coastal stock complex;

(iii) The requirement to insure the availability of herring to provide controlled opportunities for vessels in other fisheries in the Mid-Atlantic and New England;

(iv) Excess U.S. harvesting capacity available to enter the herring fishery;

(v) Total world export potential by herring producer countries;

(vi) Total world import demand by herring consuming countries;

(vii) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(viii) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(ix) Increased/decreased revenues to U.S. processors and exporters; and

(x) Increased/decreased U.S. processing productivity.

(4) Adjustments to TALFF, if any, shall be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications for a 3-year period. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3-year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and publish notification in the FEDERAL REGISTER proposing 3-year specifications. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in paragraph (b) of this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be

clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective until they are revised through the specification process.

(e) *In-season adjustments*. (1) The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the FEDERAL REGISTER stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(2) If a total allowable catch reserve (TAC reserve) is specified for an area, NMFS may make any or all of that TAC reserve available to fishers after consulting with the Council. NMFS shall propose any release of the TAC reserve in the FEDERAL REGISTER and provide an opportunity for public comment. After considering any comments received, any release of the TAC reserve shall be announced through notification in the FEDERAL REGISTER.

(f) *Management areas*. The specifications process establishes TACs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (Gulf of Maine)*: All U.S. waters of the Gulf of Maine (GOM) north of a line extending from a point at 70°00′ W. long. and 41°39′ N. to 42°53′14″ N. lat., 67° 44′35″ W. long., thence northerly along the Hague Line to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Point	N. lat.	W. long.
1	41°58′	70° 00′
2	42°38′	70° 00′
3	42°53′	69° 40′
4	43°12′	69° 00′
5	43°40′	68° 00′
6	43°58′	67° 22′(the U.S.–Canada Maritime Boundary)

(2) *Management Area 2 (South Coastal Area)*: All waters west of 70° 00′ W . long., south of 41°39′ N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) *Management Area 3 (Georges Bank)*: All U.S. waters east of 70°00′ W. long. and southeast of the line that runs from a point at 70°00′ W. long. and 41°39′ N. lat., northeasterly to the Hague Line at 42°53′14″ N. lat., 67°44′35″ W. long.

[72 FR 11277, Mar. 12, 2007, as amended at 73 FR 4757, Jan. 28, 2008]

§ 648.201 Closures and TAC controls.

(a) If NMFS determines that catch will reach 95 percent of the annual TAC allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A TAC allocated to the first seasonal period as set forth in paragraph (f) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as provided in paragraphs (c) and (d) of this section. These limits shall be enforced based on a calendar day, without regard to the length of the trip.

(b) The percent of the TAC that triggers imposition of the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section may be adjusted through the specification process described in § 648.200. Any lowering of the percent of the TAC that triggers the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section must be accomplished through the framework adjustment or amendment processes.

(c) A vessel may transit an area that is limited to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) A vessel may land in an area that is limited to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(e) NMFS shall implement fishing restrictions as specified in paragraph (a) of this section by publication of a notification in the FEDERAL REGISTER, without further opportunity for public comment.

(f) The TAC for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal TACs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(g) Up to 500 mt of the Area 1A TAC shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67° 16.8 W. long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the TAC allocation for Area 1A.

§ 648.202 Season and area restrictions.

(a) Purse Seine/Fixed Gear Only Area. Vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A limited access herring vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed pursuant to § 648.23(b). Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 – May 31.

(b) [Reserved]

§ 648.203 Gear restrictions.

(a) Midwater trawl gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), and in the Nantucket Lightship Area as described in § 648.81(c)(1), provided it complies with the midwater trawl gear exemption requirements specified under the NE multispecies regulations at § 648.80(d), including issuance of a Letter of Authorization.

(b) Purse seine gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), provided it complies with the purse seine exemption requirements specified under the NE multispecies requirements at § 648.80(e), including issuance of a Letter of Authorization.

§ 648.204 Possession restrictions.

(a) A vessel must be issued a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from or in the EEZ from any herring management area, provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit is authorized to fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit is authorized to fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit is authorized to fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, from any management area defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area.

(4) A vessel issued an open access herring permit may not fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip and/or per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(5) A vessel issued a herring permit may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

(b) Both vessels involved in a pair trawl operation must be issued valid herring permits to fish for, possess, or land Atlantic herring harvested from any management area. Both vessels must be issued the herring permit appropriate for the amount of herring jointly possessed by both of the vessels participating in the pair trawl operation.

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel with the exception of fixed gear fishermen must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. At least 1 hr prior to leaving port, the owner or authorized representative of a herring vessel that is required to use VMS as specified in this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the herring fishery. VMS codes and instructions are available from the Regional Administrator upon request.

§ 648.206 Framework provisions.

(a) *Framework adjustment process.* In response to the triennial review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Herring FMP, or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management measures over the span of at least two Council meetings. The Council may delegate authority to the Herring Oversight Committee to conduct an initial review of the options being considered. The Oversight Committee shall review the options and relevant information, consider public comment, and make a recommendation to the Council.

(2) After the first framework meeting, the Council may refer the issue back to the Herring Oversight Committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council shall identify, at this meeting, a preferred alternative and/or identify the possible alternatives.

(3) A framework document shall be prepared that discusses and shows the impacts of the alternatives. It shall be available to the public prior to the second or final framework meeting.

(4) After developing management actions and receiving public testimony, the Council shall make a recommendation to NMFS. The Council's recommendation must include supporting rationale and, if changes to the management measures are recommended,

an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(5) If the Council's recommendation to NMFS includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information NMFS may:

(i) Concur with the Council's recommended management measures and determine that the recommended management measures should be published as a final rule in the FEDERAL REGISTER based on the factors specified in paragraphs (c)(4)(i)-(iv) of this section.

(ii) Concur with the Council's recommendation and determine that the recommended management measures should be first published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Council's recommendation, the measures shall be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Council shall be notified in writing of the reasons for the non-concurrence.

(b) Possible framework adjustment measures. Measures that may be changed or implemented through framework action include:

(1) Management area boundaries or additional management areas;

(2) Size, timing, or location of new or existing spawning area closures;

(3) Closed areas other than spawning closures;

(4) Restrictions in the amount of fishing time;

(5) A days-at-sea system;

(6) Adjustments to specifications;

(7) Adjustments to the Canadian catch deducted when determining specifications;

(8) Distribution of the TAC;

(9) Gear restrictions (such as mesh size, etc.) or requirements (such as bycatch-reduction devices, etc.);

(10) Vessel size or horsepower restrictions;

(11) Closed seasons;

(12) Minimum fish size;

(13) Trip limits;

(14) Seasonal, area, or industry sector quotas;

(15) Measures to describe and identify essential fish habitat (EFH), fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH;

(16) Measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP;

(17) Changes to the overfishing definition;

(18) Vessel monitoring system requirements;

(19) Limits or restrictions on the harvest of herring for specific uses;

(20) Quota monitoring tools, such as vessel, operator, or dealer reporting requirements;

(21) Permit and vessel upgrading restrictions;

(22) Implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict

occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions;

(23) Limited entry or controlled access system;

(24) Specification of the amount of herring to be used for roe

(25) In-season adjustments to TACs;

(26) Measures to address bycatch and bycatch monitoring;

(27) Requirements for a herring processor survey;

(28) TAC set-aside amounts, provisions, adjustments;

(29) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and

(30) Any other measure currently included in the FMP.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[72 FR 11277, Mar. 12, 2007, as amended at 73 FR 4757, Jan. 28, 2008]

§ 648.207 Herring Research Set-Aside (RSA).

(a) NMFS shall publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by NMFS, to solicit proposals from industry for the upcoming 3 fishing years, based on research priorities identified by the Council.

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives, the relationship of the proposed research to herring research priorities and/or management needs, project design, participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall convene a review panel, including technical experts, to review proposals submitted in response to the RFP. Each panel member shall recommend which research proposals should be authorized to utilize RSA, based on the selection criteria described in the RFP.

(d) NMFS shall consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(e) The grant awards approved under the RFPs shall be for the upcoming 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP. Proposals to fund research that would start prior to, or that would end after the fishing year, are not eligible for consideration. The RSA must be utilized in the same fishing year in which it was distributed (i.e., RSA and compensation trips cannot be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

(f) Whenever possible, research proposals shall be reviewed and approved prior to the publication of final quota specifications for the upcoming fishing years. In the event that the approved proposals do not make use of any or all of the set-asides, the unutilized portion of the set-aside shall be reallocated back to its respective management area(s) when the final specifications are published. If there is unutilized set-aside available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the 3-year specifications. In this case, NMFS shall release the unutilized portion of the RSA back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized set-aside after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS may release the unutilized portion of the set-aside back to its respective management area(s) for all 3

fishing years covered by the specifications.

(g) If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective TAC by publication of a notice in the FEDERAL REGISTER in compliance with the Administrative Procedure Act, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

(h) Any RSA reallocated under paragraphs (f) and (g) of this section may not be used solely as compensation for research.

(i) Researchers may apply for the use of more than one herring RAS allocation for individual research projects, and may request that the set-aside be collected separately from the research trip or as part of the research trip. The research compensation trips do not necessarily have to be conducted by the same vessel, but must be conducted in the management area from which the set-aside was derived.

(j) No more than 50 percent of the allocated set-aside may be taken before the research begins. If a research project is terminated for any reason prior to completion, any funds collected from the catch sold to pay for research expenses must be refunded to U.S. Treasury.

(k) NMFS shall provide authorization of the research activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(l) Upon completion of herring research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the herring research.

Subpart L—Management Measures for the Spiny Dogfish Fishery

SOURCE: 65 FR 1570, Jan. 11, 2000, unless otherwise noted.

§ 648.230 Catch quotas and other restrictions.

(a) *Process for setting specifications.* The Spiny Dogfish Monitoring Committee will review the following data at least every 5 years, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure that a target fishing mortality rate specified in the Spiny Dogfish Fishery Management Plan will not be exceeded in each year for which TAL and any other measures are recommended: Commercial and recreational catch data; discards; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a commercial quota and any other measures including those in paragraphs (b)(1)-(b)(5) of this section that are necessary to assure that the F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The quota may be set within the range of zero to the maximum allowed. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;

(2) Seasons;

(3) Mesh size restrictions;

(4) Trip limits;

(5) Changes to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports; or

(6) Other gear restrictions.

(c) *Joint Spiny Dogfish Committee recommendation.* The Councils' Joint

Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a commercial quota and, possibly, other measures, including those specified in paragraph (b) of this section, necessary to assure that the F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The commercial quota may be set within the range of zero to the maximum allowed.

(d) *Council recommendations.* The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota and other management measures to assure that the target F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils. After such review, NMFS shall publish a proposed rule in the FEDERAL REGISTER specifying a coastwide commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. After considering public comments, NMFS shall publish a final rule in the FEDERAL REGISTER to implement such a quota and other measures.

(e) [Reserved]

(f) *Distribution of annual quota.* (1) The annual quota specified according to the process outlined in paragraph (a) of this section shall be allocated between two semi-annual quota periods as follows: May 1 through October 31 (57.9 percent) and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested.

[71 FR 3017, Jan. 19, 2006, as amended at 73 FR 4757, Jan. 28, 2008]

§ 648.231 Closures.

The Regional Administrator shall determine the date by which the quota for each semi-annual period described in § 648.230(d)(1) will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of that semi-annual period by publishing a notification in the FEDERAL REGISTER. Upon the closure date and for the remainder of the semi-annual quota period, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

§ 648.232 Time Restrictions. [Reserved]

§ 648.233 Minimum Fish Sizes. [Reserved]

§ 648.234 Gear restrictions. [Reserved]

§ 648.235 Possession and landing restrictions.

(a) *Quota Period 1.* From May through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 600 lb (272 kg) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 600 lb (272 kg) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter.

[66 FR 22476, May 4, 2001, as amended at 67 FR 6201, Feb. 11, 2002; 69 FR 53362, Sept. 1, 2004; 71 FR 40438, July 17, 2006]

§ 648.236 Special Management Zones. [Reserved]

§ 648.237 Framework provisions.

(a) *Within season management action.* The Councils may, at any time, initiate action to add or adjust management measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size; maximum fish size; gear requirements, restrictions or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside program; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects.

(2) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. The Councils' recommendation must include supporting rationale, an analysis of impacts and, if management measures are recommended, a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, they must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Councils' recommendation includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, then the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[65 FR 1570, Jan. 11, 2000, as amended at 73 FR 4757, Jan. 28, 2008]

Subpart M—Management Measures for the Atlantic Deep-Sea Red Crab Fishery

SOURCE: 67 FR 63233, Oct. 10, 2002, unless otherwise noted.

§ 648.260 Specifications.

(a) *Process for setting specifications*. The Council's Red Crab Plan Development Team (PDT) shall prepare a Stock Evaluation and Assessment (SAFE) Report at least every 3 years. Based on the SAFE Report, the PDT shall develop and present to the Council recommended specifications as defined in this paragraph (a) for up to 3 fishing years. The PDT shall meet at least once annually during the intervening years between SAFE Reports to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming years need to be modified. The annual review shall be limited in scope and shall concentrate on the most recent fishery-dependent information including, but not limited to, days-at-sea (DAS) used and red crab landings. In the event that the PDT recommends an adjustment to the specifications, the PDT shall prepare a supplemental specifications package for a specific time duration up to 3 years. Specifications include the specification of OY, the setting of any target TACs, allocation of DAS, and/or adjustments to trip/possession limits.

(1) *Target total allowable catch*. The target TAC for each fishing year will be 5.928 million lb (2,688.9 mt), unless modified pursuant to this paragraph.

(2) *Adjustments to DAS allocation based on target TAC*. For purposes of determining the appropriate DAS allocation, any overage of the target TAC that occurs in a given fishing year will be subtracted from the target TAC in the following fishing year and, conversely, any underage of the target TAC that occurs in a given fishing year will be added to the target TAC in the following fishing year.

(3) *In-season adjustments*. The specifications established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the FEDERAL REGISTER stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Deep-Sea Red Crab FMP objectives and other FMP provisions.

(b) *Development of specifications*. In developing the management measures and specifications, the PDT shall review at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the

mortality of red crabs; and any other relevant information.

(1) The PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(2) The Council shall review these recommendations and any public comment received and shall submit its recommendation to the Regional Administrator after at least one Council meeting. If the Council submits a recommendation to the Regional Administrator after one Council meeting and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the FEDERAL REGISTER as a proposed rule unless there is adequate justification to waive prior notice and comment . The Council may instead choose to follow the framework adjustment process specified at § 648.261 and request that the Regional Administrator publish the recommendation as a proposed or final rule. If the Regional Administrator concurs that the Council's recommendation meets the Red Crab FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the FEDERAL REGISTER. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law, and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on March 1, fishing may continue under the specifications for the previous year. However, DAS used by a vessel on or after March 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

[67 FR 63233, Oct. 10, 2002, as amended at 70 FR 44069, Aug. 1, 2005; 73 FR 4757, Jan. 28, 2008]

§ 648.261 Framework adjustment process.

(a) To implement a framework adjustment for the Red Crab FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) In response to an annual review of the status of the fishery or the resource by the Red Crab PDT, or at any other time, the Council may recommend adjustments to any of the measures proposed by the Red Crab FMP. The Red Crab Oversight Committee may request that the Council initiate a framework adjustment. Framework adjustments shall require one initial meeting (the agenda must include notification of the impending proposal for a framework adjustment) and one final Council meeting. After a management action has been initiated, the Council shall develop and analyze appropriate management actions within the scope identified below. The Council may refer the proposed adjustments to the Red Crab Committee for further deliberation and review. Upon receiving the recommendations of the Oversight Committee, the Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. After receiving public comment, the Council must take action (to approve, modify, disapprove, or table) on the recommendation at the Council meeting following the meeting at which it first received the recommendations. Documentation and analyses for the framework adjustment shall be available at least 2 weeks before the final meeting.

(2) After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall

include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts;

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the FEDERAL REGISTER. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the FEDERAL REGISTER.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(5) The Regional Administrator may approve, disapprove, or partially disapprove the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) [Reserved]

§ 648.262 Effort-control program for red crab limited access vessels.

(a) *General*. A vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, or barter, greater than 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in this part.

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(13)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 unused DAS, or 10 percent of the total allocated DAS, whichever is less, into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) [Reserved]

(b) *DAS program*—(1) *For fishing year 2002*. For the fishing year beginning March 1, 2002, each limited access permit holder's allocation of DAS shall be based on a baseline of 130 DAS per vessel and, if necessary, adjusted as specified in this paragraph (b). Based upon the best available information, the Regional Administrator shall estimate the landings from May 15, 2002, which is the first day following the expiration of the red crab Secretarial interim rule, up to the implementation date of the red crab limited access program. These estimated total landings shall be

deducted from the target TAC and the percentage of the TAC that remains available shall be used to reduce the initial baseline of DAS (i.e., a percentage of 130 DAS to an equivalent percentage). For example, if estimated landings equal 20 percent of the target TAC, thereby leaving 80 percent of the target TAC, the DAS allocation shall be reduced by 20 percent to 104 DAS. Each vessel shall be allocated the adjusted DAS for the remainder of the fishing year. The Regional Administrator shall notify permit holders by letter of the newly calculated DAS allocation.

(2) *For fishing years 2003 and thereafter*. Each limited access permit holder shall be allocated 156 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(B)(2) or the TAC is adjusted consistent with § 648.260.

(3) *Accrual of DAS*. Any portion of a day in which a vessel is out of port, after having declared into the DAS fishery, shall count as a full DAS. For example, if a vessel calls into the fishery at 11 p.m. on Thursday and calls out of the fishery at 10 p.m. on Friday, the next day, that vessel shall be assessed 2 full DAS (48 hours) for the fishing trip, even though the trip lasted only 23 hours.

(4) *Good Samaritan credit*. Same as § 648.53(f).

(5) *Declaring red crab DAS*. A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the red crab DAS program using the notification requirements specified in § 648.10.

(6) *Adjustments in annual red crab DAS allocations*. Adjustments to the annual red crab DAS allocation, if required to meet fishing mortality goals, may be implemented pursuant to § 648.260.

[67 FR 63233, Oct. 10, 2002, as amended at 69 FR 10177, Mar. 4, 2004]

§ 648.263 Red crab possession and landing restrictions.

(a) *Vessels issued limited access red crab permits*—(1) *Possession and landing restrictions*. (i) A vessel or operator of a vessel that has been issued a valid limited access red crab permit under this subpart may fish for, catch, possess, transport, land, sell, trade, or barter, up to 75,000 lb (34,019.4 kg) per trip, unless adjusted consistent with paragraph (a)(1)(ii) of this section, of whole red crab, or its equivalent in weight as specified at paragraphs (a)(2)(i) and (ii) of this section, when fishing under a red crab DAS.

(ii) A vessel owner or operator who shows credible proof of landings on at least one trip higher than 75,000 lb (34,019.4 kg) during the limited access qualification period shall qualify for a larger trip limit, rounded to the nearest 5,000 lb (2,268 kg) of the higher trip landed. Such proof must be in writing and received by NMFS within 30 days after receipt of a vessel owner's application for an initial limited access red crab vessel permit. A vessel owner shall fish consistent with the provisions and trip limit specified at paragraph (a)(1)(i) of this section until credible proof of a trip higher than 75,000 lb (34,019.4 kg) is approved by NMFS.

(2) *Conversion to whole crab weight*. (i) For red crab that is landed in half sections, with all gills and other detritus still intact, the recovery rate is 64 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.56.

(ii) For red crab that is landed in half sections, with all gills and other detritus removed, the recovery rate is 58 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.72.

(3) *Female red crab restriction*. A vessel may not fish for, catch, possess, transport, land, sell, trade, or barter, female red crabs in excess of one standard U.S. fish tote of incidentally caught female red crabs per trip when fishing under a red crab DAS.

(4) *Full-processing prohibition*. No person may fully process at sea, possess, or land, fully-processed red crab.

(5) *Mutilation restriction*. A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote per trip when fishing under a red crab DAS.

(b) *Vessels issued red crab incidental catch permits*—(1) *Possession and landing restrictions*. A vessel or operator of a vessel that has been issued a red crab

incidental catch permit may catch, possess, transport, land, sell, trade, or barter, up to 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at paragraphs (a)(1)(i) and (ii) of this section, per fishing trip in or from the Red Crab Management Unit.

(2) *Full-processing prohibition*. No person may fully process at sea, possess, or land, fully-processed red crab.

(3) *Mutilation restriction*. A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies.

§ 648.264 Gear requirements/restrictions.

(a) *Limited access red crab permitted vessels*. (1) No vessel may haul or harvest red crab from any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section, when on a red crab DAS.

(2) A vessel owner or operator of a vessel that holds a valid limited access red crab permit may fish with, deploy, possess, haul, harvest red crab from, or carry on board a vessel, up to a total of 600 traps/pots when fishing for, catching, or landing red crab. A vessel owner is required to declare, on the annual permit application, the maximum number of traps/pots used per string and the maximum number of strings employed, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots. The vessel is restricted to the product of the maximum number of traps/pots per string multiplied by the maximum number of strings declared on the annual vessel permit application.

(3) *Parlor traps/pots*. No person may haul or remove lobster, red crab or fish from parlor traps/pots when fishing under a red crab DAS.

(4) *Maximum trap/pot size*. The maximum allowable red crab trap/pot size of red crab traps/pots used or deployed on a red crab DAS is 18 cubic feet (0.51 cubic meters) in volume. Red crab traps/pots may be rectangular, trapezoidal or conical only, unless other red crab trap/pot designs whose volume does not exceed 18 cubic feet (0.51 cubic meters) are authorized by the Regional Administrator.

(5) *Gear markings*. The following is required on all buoys used at the end of each red crab trawl:

(i) The letters ''RC'' in letters at least 3 inches (7.62 cm) in height must be painted on top of each buoy.

(ii) The vessel's permit number in numerals at least 3 inches (7.62 cm) in height must be painted on the side of each buoy to clearly identify the vessel.

(iii) The number of each trap trawl relative to the total number of trawls used by the vessel (i.e., ''3 of 6'') must be painted in numerals at least 3 inches (7.62 cm) in height on the side of each buoy.

(iv) High flyers and radar reflectors are required on each trap trawl.

(6) *Additional gear requirements*. (i) Vessels must comply with the gear regulations found at § 229.32 of this title.

(ii) Red crab traps/pots, fished in 200 fathoms (365.8 m) or less by a vessel issued a limited access lobster permit under § 697.4(a), must comply with the trap tagging requirements specified at § 697.19.

(b) [Reserved]

[67 FR 63233, Oct. 10, 2002, as amended at 72 FR 57194, Oct. 5, 2007]

Subpart N—Management Measures for the Tilefish Fishery

SOURCE: 66 FR 49145, Sept. 26, 2001, unless otherwise noted.

§ 648.290 Catch quotas and other restrictions.

The fishing year is the 12-month period beginning with November 1, 2001.

(a)*Total allowable landings (TAL)*. The TAL for each fishing year will be 1.995 million lb (905,172 kg) unless modified pursuant to paragraph (d) of this section.

(b) *TAL allocation*. For each fishing year, up to 3 percent of the TAL may be set aside for the purpose of funding research. Once a research TAC, if any, is set aside, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining TAL will be allocated as follows: Full-time tier Category 1, 66 percent; Full-time tier Category 2, 15 percent; and Part-time, 19 percent.

(c) *Adjustments to the quota.* Any overages of the quota for any limited access category that occur in a given fishing year will be subtracted from the quota for that category in the following fishing year. If incidental harvest exceeds 5 percent of the TAL for a given fishing year, the trip limit of 300 lb (138 kg) for the incidental category may be reduced in the following year. If an adjustment is required, a notification of adjustment of the quota will be published in the FEDERAL REGISTER.

(d) *Annual specification process.* The Tilefish FMP Monitoring Committee (Monitoring Committee) will meet after the completion of each stock assessment or at the request of the Council Chairman. The Monitoring Committee shall review tilefish landings information and any other relevant available data to determine if the annual quota requires modification to respond to any changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the TAL will not be exceeded. Based on that review, the Monitoring Committee will provide a recommendation to the Tilefish Committee of the Council. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the Council the appropriate quota and management measures for the next fishing year. The Council shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate TAL for the next fishing year, the percentage of TAL allocated to research quota, and any management measures to assure that the TAL will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the FEDERAL REGISTER specifying the annual TAL and any management measures to assure that the TAL will not be exceeded. After considering public comments, NMFS will publish a final rule in the FEDERAL REGISTER to implement a TAL and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (e) of this section. NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

(e) *Research quota.* See § 648.21(g).

§ 648.291 Closures.

(a) *EEZ closure.* If the Regional Administrator determines that the quota for a certain limited access category will be exceeded, the Regional Administrator will close the EEZ to fishing for tilefish by those vessels in that category for the remainder of the fishing year and publish notification in the FEDERAL REGISTER.

(b) [Reserved]

§ 648.292 Tilefish trip limits.

Any U.S. fishing vessel fishing under a tilefish incidental catch category permit is prohibited from possessing more than 300 lb (138 kg) of tilefish per trip.

§ 648.293 Framework specifications.

(a) *Within-season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Tilefish FMP.

(1) *Specific management measures.* The following specific management measures may be implemented or adjusted at any time through the framework process:

(i) Minimum fish size,

(ii) Minimum hook size,

(iii) Closed seasons,

(iv) Closed areas,

(v) Gear restrictions or prohibitions,

(vi) Permitting restrictions,

(vii) Gear limits,

(viii) Trip limits,

(ix) Overfishing definition and related thresholds and targets,

(x) Annual specification quota setting process,

(xi) Tilefish FMP Monitoring Committee composition and process,

(xii) Description and identification of EFH,

(xiii) Fishing gear management measures that impact EFH,

(xiv) Habitat areas of particular concern,

(xv) Set-aside quotas for scientific research, and

(xvi) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs.

(2) *Adjustment process.* If the Council determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two Council meetings. The Council will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments prior to and at the second Council meeting on that framework action. After developing management actions and receiving public comment, the Council will submit the recommendation to the Regional Administrator; the recommendation must include supporting rationale, an analysis of impacts, and a recommendation on whether to publish the management measures as a final rule.

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council will make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur with the Council's recommendation, the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take

emergency action under section 305(e) of the Magnuson-Stevens Act.

[66 FR 49145, Sept. 26, 2001, as amended at 73 FR 4757, Jan. 28, 2008]

§ 648.294 [Reserved]

Subpart O—Management Measures for the NE Skate Complex Fisheries

SOURCE: 68 FR 49701, Aug. 19, 2003, unless otherwise noted.

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review*. The Council, its Skate Plan Development Team (), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources following implementation of the Skate FMP.

(1) Starting 1 year after implementation of the Skate FMP, the Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices and a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the shall provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. Any suggested revisions to management measures may be implemented through the framework process specified in § 648.321, or through an amendment to the FMP.

(3) For overfished skate species, the Skate PDT and the Council will monitor the trawl survey index as a proxy for stock biomass. As long as the 3–year average of the appropriate weight per tow increases above the average for the previous 3 years, it is assumed that the stock is rebuilding to target levels. If the 3–year average of the appropriate survey mean weight per tow declines below the average for the previous 3 years, then the Council is required to take management action to ensure that stock rebuilding will continue to target levels.

(b) *Biennial review*. The Skate shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate. The SAFE shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(c) *Baseline review*—(1) *Baseline review process*. If the Council initiates an action in another FMP that may make less restrictive one or more of the baseline measures described in paragraph (c)(2) of this section and as identified in the Skate FMP, or that may change one or more of the baseline measures such that the change is likely to have an effect on the overall mortality for a species of skate subject to a formal rebuilding program, the Skate PDT shall take the following action prior to the Council's final decision on the initiating action:

(i) Evaluate the potential impacts of the proposed changes on rebuilding skate populations and overall mortality for the skate species subject to a formal rebuilding program, and develop, if the action would be inconsistent with the rebuilding plans, management measures (or modifications to the proposed action) to mitigate the impacts of the changes to the baseline measure(s) on rebuilding skates.

(ii) If the Skate PDT recommends management measures to mitigate impacts, the Council shall include in the initiating action management measures to offset the changes to the baseline measures. The management measures recommended by the Council may be one or more of the measures recommended by the Skate PDT, or other suitable measures developed by the Council.

(iii) If the Council fails to include in the initiating action management measures to offset the changes to the baseline measures when the Skate PDT recommends action, and cannot justify this lack of action, the Regional Administrator may implement one or more of the measures recommended by

the Skate PDT through rulemaking consistent with the Administrative Procedure Act.

(2) *Baseline measures.* The baseline review process, as described in paragraph (c)(1) of this section, is initiated by changes to any of the following management measures:

(i) NE Multispecies year-round closed areas (§ 648.81);

(ii) NE Multispecies DAS restrictions (§ 648.82);

(iii) Gillnet gear restrictions (§ 648.82(k));

(iv) Lobster restricted gear areas (§ 697.23);

(v) Gear restrictions for small mesh fisheries (§ 648.80(a)(5), (a)(9), and (a)(15));

(vi) Monkfish DAS restrictions for Monkfish-Only permit holders (§ 648.92); or

(vii) Scallop DAS restrictions (§ 648.53).

§ 648.321 Framework adjustment process.

(a) *Adjustment process.* To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council will develop and analyze appropriate management actions within the scope of measures specified at § 648.321(b). The Council will publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the FEDERAL REGISTER. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the FEDERAL REGISTER.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the

FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures*. Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting;

(2) Skate overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or quotas for non-directed fisheries;

(9) Establishing a mechanism for TAC set-asides to mitigate , conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) Adjustments and or/resetting of the ''baseline'' of management measures in other, described in § 648.320(c);

(19) OY and/or MSY specifications;

(20) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and

(21) Any other measures contained in the FMP.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[68 FR 49701, Aug. 19, 2003, as amended at 73 FR 4757, Jan. 28, 2008]

§ 648.322 Skate possession and landing restrictions.

(a) *Skate wing possession and landing limit*. A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under paragraph (b) of this section, may fish for, possess, and/or land up to the allowable daily and per trip limits specified as follows:

(1) Possess up to 20,000 lb (9,072 kg) of skate wings (45,400 lb (20,593 kg) whole weight) per trip of greater than 24 hours in duration; or

(2) Land up to 10,000 lb (4,536 kg) of skate wings (22,700 lb (10,296 kg) whole weight) per trip of 24 hours or less in duration.

(b) *Bait Letter of Authorization (LOA)*. A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions, provided that the following requirements and conditions are met:

(1) The vessel owner or operator obtains an LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner/operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) Vessels that fish for, possess, and/or land any combination of skate wings and whole skates less than 23 inches (58.42 cm) total length must comply with the possession limit restrictions under paragraph (a) of this section for all skates or skate parts on board.

(5) Any vessel owner/operator meets the requirements at § 648.13(h).

(6) Skate bait-only possession limit LOA—The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 7 days.

(c) *Prohibitions on possession of skates.* All vessels fishing in the EEZ portion of the Skate Management Unit are subject to the following prohibitions:

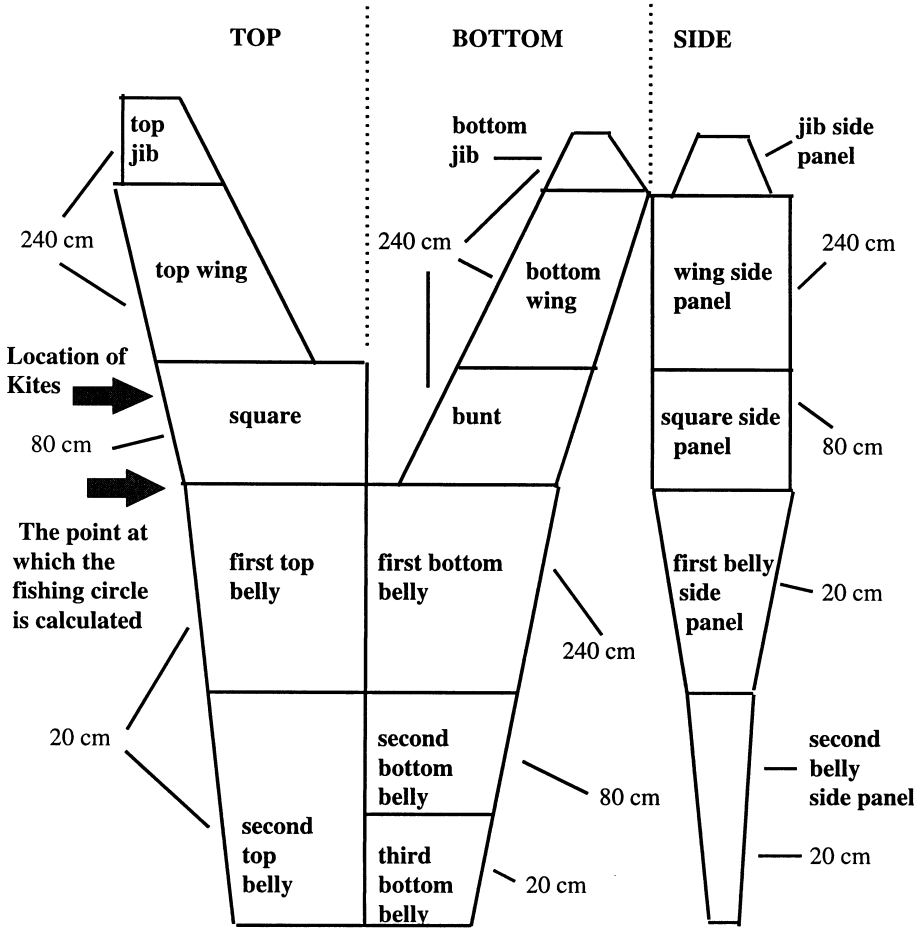
(1) A vessel may not retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) A vessel may not retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[68 FR 49701, Aug. 19, 2003, as amended at 69 FR 22988, Apr. 27, 2004]

FIGURE 1 TO PART 648

Figure 1 to Part 648



Nomenclature for 4 Seam, Ruhle Trawl and Minimum Mesh Size by Section

20 cm = 7.9 inches;
80 cm = 31.5 inches;
240 cm = 7.9 ft

[73 FR 52215, Sept. 9, 2008]

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 60 FR 13919, Mar. 15, 1995, unless otherwise noted.

Subpart A—General Measures

§ 654.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council under the Magnuson-Stevens Act.

(b) This part governs conservation and management of stone crab and restricts the trawl fishery in the management area.

(c) ''EEZ'' refers to the EEZ in the management area, unless the context clearly indicates otherwise.

[60 FR 13919, Mar. 15, 1995, as amended at 67 FR 61993, Oct. 3, 2002]

§ 654.2 Definitions.

In addition to the definitions in the Magnuson–Stevens Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Management area means the EEZ off the coast of Florida from a line extending directly south from the Alabama/Florida boundary (87°31′06″ W. long.) to a line extending directly east from the Dade/Monroe County, FL boundary (25°20.4′ N. lat.).

Regional Administrator (RA) for the purposes of this part, means the Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or a designee.

Stone crab means *Menippe mercenaria*, *M. adina*, or their interbreeding hybrids, or a part thereof.

[60 FR 13919, Mar. 15, 1995, as amended at 67 FR 61991, 61993, Oct. 3, 2002]

§ 654.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

(b) The regulations in this part are intended to be compatible with, and do not supersede, similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(c) The regulations in this part are intended to be compatible with similar regulations and statutes in effect in Florida's waters.

[60 FR 13919, Mar. 15, 1995, as amended at 63 FR 44595, Aug. 20, 1998; 67 FR 61991, Oct. 3, 2002]

§ 654.4 Trap limitation program.

The provisions of this section establish a Federal stone crab trap limitation program in the management area that complements the stone crab trap limitation program implemented by the Florida Fish and Wildlife Conservation Commission (FFWCC). The Federal program requires issuance of a commercial vessel permit, a trap certificate, and annual trap tags. A person in the management area who is in compliance with the FFWCC trap limitation program is exempt from the requirements of the Federal trap limitation program specified in this section.

(a) *Commercial vessel permit requirements*. Effective December 2, 2002, for a person aboard a vessel, except a person who is in compliance with the FFWCC stone crab trap limitation program, to possess or use a stone crab trap, possess more than 1 gallon (4.5 L) of stone crab claws, or sell stone crab claws in or from the management area, a valid Federal commercial vessel permit for stone crab must have been issued to the vessel and must be on board.

(1) *Eligibility for a commercial vessel permit*. The owner of a vessel is eligible to receive a Federal commercial vessel permit for stone crab if the owner provides documentation as specified in paragraph (a)(2) of this section substantiating his or her landings of a minimum of 300 lb (136 kg) of stone crab claws harvested from the management area or Florida's state waters during at least one of the stone crab fishing seasons, October 15 through May 15, for 1995/1996 through 1997/1998. A person who has a valid stone crab trap certificate issued under the stone crab trap limitation program implemented by the FFWCC or a person whose Florida saltwater products license (SPL) has been suspended or revoked is not eligible for a Federal commercial vessel permit for stone crab.

(2) *Documentation of eligibility for a commercial vessel permit*. The only acceptable source of documentation of stone crab claws landed in Florida is landings documented by the Florida trip ticket system. To be creditable toward the 300–lb (136–kg) minimum qualifying landings, Florida landings must be associated with a single Florida SPL. Landings of stone crab harvested from the management area or Florida's state waters but landed in a state other than Florida may be documented by dealer records. Such dealer records must definitively show the species known as stone crab and must include the vessel's name, official number, or other reference that provides a way of clearly identifying the vessel; dates and amounts of stone crab landings; and a sworn affidavit by the dealer confirming the accuracy and authenticity of the records. A sworn affidavit is an official written statement wherein the individual signing the affidavit affirms that the information presented is accurate and can be substantiated, under penalty of law. Documentation of landings are subject to verification by comparison with state, Federal, and other records and information. Submission of false documentation is a violation of the regulations in this part and may disqualify the owner from participation in the fishery.

(3) *Application for a commercial vessel permit*. Applications for a commercial vessel permit for stone crab are available from the RA. A vessel owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) who desires such a permit must submit an application, including documentation of stone crab landings as specified in paragraphs (a)(1) and (2) of this section, to the RA postmarked or hand-delivered not later than January 31, 2003. Failure to apply in a timely manner will preclude permit issuance even when the vessel owner meets the eligibility criteria for such permit.

(i) An applicant must provide the following:

(A) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner.

(D) Documentation of eligibility as specified in paragraphs (a)(1) and (2) of this section.

(E) The applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(F) Number of traps authorized under § 654.4(b) that will be used and trap dimensions.

(G) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, if specified on the application form.

(H) Any other information that may be necessary for the issuance or administration of the permit, if specified on the application form.

(ii) [Reserved]

(4) *Notification of incomplete application*. Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned.

(5) *Change in application information*. The owner of a vessel with a commercial vessel permit must notify the RA within 30 days after any change in the application information specified in paragraph (a)(3)(i) of this section. The permit is void if any change in the information is not reported within 30 days.

(6) *Initial commercial vessel permit issuance*. (i) The RA will issue an initial commercial vessel permit for stone crab to an applicant if the applicant submits a complete application that complies with the requirements of paragraphs (a)(1), (2), and (3) of this section. An application is complete when all requested forms, information, and documentation have been received.

(ii) If the eligibility requirements specified in paragraphs (a)(1) and (2) of this section are not met, the RA will notify the vessel owner of such determination and the reasons for it not later than 30 days after receipt of the application.

(7) *Appeal of initial denial of a commercial vessel permit*—(i) *General procedure*. An applicant for a commercial vessel permit for stone crab who has complied with the application procedures in paragraph (a)(3) of this section and who initially has been denied such permit by the RA may appeal that decision to the RA. The appeal must be postmarked or hand-delivered to the RA not later than 60 days after the date of notification of the initial denial. An appeal must be in writing and must include copies of landing records relating to eligibility, such other reliable evidence upon which the facts related to issuance can be resolved, and a concise statement of the reasons the initial denial should be reversed or modified. An appeal constitutes the applicant's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Act for the RA to make available to the appellate officer(s) such confidential landings and other records as are pertinent to the matter under appeal. The applicant may request a hearing. The RA will appoint one or more appellate officers to review the appeal and make recommendations to the RA. The appellate officer(s) may recommend that the RA deny the appeal, issue a decision on the merits of the appeal if the records are sufficient to reach a final judgement, or conduct a hearing. The RA may affirm, reverse, modify, or remand the appellate officer(s) recommendation.

(ii) *Hearings*. If the RA determines that a hearing is necessary and appropriate, the RA or appellate officer(s) will notify the applicant of the place and date of the hearing. The applicant will be allowed 30 days after the date of the notification of the hearing to provide supplementary documentary evidence in support of the appeal.

(8) *Duration of a commercial vessel permit*. A commercial vessel permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the vessel is sold.

(9) *Transferability of a commercial vessel permit, trap certificate, or annual trap tags*. A commercial vessel permit, trap certificate, or annual trap tags issued under this section are not transferable or assignable, except that an owner of a permitted vessel may request that the RA transfer the permit, trap certificate, and annual trap tags to another vessel owned by the same entity. To effect such a transfer, the owner must return the existing permit, trap certificate and annual trap tags to the RA along with an application for a commercial vessel permit for the replacement vessel. A commercial vessel permit, trap certificate or annual trap tags can not be leased.

(10) *Renewal of a commercial vessel permit*. A commercial vessel permit required by this section is issued on an annual basis. An owner whose permit is expiring will be mailed a notification by the RA approximately 2 months prior to expiration of the current permit. The notification will include a preprinted renewal application. A vessel owner who does not receive a notification of status of renewal of a permit by 45 days prior to expiration of the current permit must contact the RA. A

permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within 1 year of the expiration date of the permit.

(11) *Display of a commercial vessel permit.* A commercial vessel permit issued under this section must be carried on board the vessel. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(12) *Sanctions and denials of a commercial vessel permit.* A commercial vessel permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(13) *Alteration of a commercial vessel permit.* A commercial vessel permit that is altered, erased, or mutilated is invalid.

(14) *Replacement of a commercial vessel permit.* A replacement permit may be issued. An application for a replacement permit is not considered a new application.

(15) *Fees.* A fee is charged for each application for initial issuance or renewal of a permit, for each request for replacement of such permit, and for each trap tag as required under this section. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application, request for replacement, or request for trap tags.

(b) *Issuance of a trap certificate and annual trap tags.* The RA will issue a trap certificate and annual trap tags to each person who has been issued a Federal commercial vessel permit for stone crab. The number of trap tags issued will be determined, based upon the documentation of landings submitted consistent with § 654.4(a)(1), (2) and (3), by dividing that person's highest landings of stone crab claws during any one of the fishing seasons for 1995/1996, 1996/1997, or 1997/1998 by 5 lb (2.27 kg).

[67 FR 61991, Oct. 3, 2002]

§ 654.5 Recordkeeping and reporting. [Reserved]

§ 654.6 Vessel and gear identification.

An owner or operator of a vessel for which a valid Federal commercial vessel permit for stone crab has been issued must comply with the vessel and gear identification requirements of this section. An owner or operator of a vessel in the management area who is in compliance with the stone crab trap limitation program and vessel and gear marking requirements implemented by the FFWCC is exempt from the requirements of this section.

(a) *Vessel identification.* An owner or operator of a vessel for which a valid Federal commercial vessel permit for stone crab has been issued must—

(1) *Display the vessel's official number*—(i) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(2) *Display the color code assigned by the RA*—(i) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In the form of a circle permanently affixed to or painted on the vessel.

(iii) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(3) Keep the official number and the color code clearly legible and in good repair and ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code from an enforcement vessel or aircraft.

(b) *Gear identification*—(1) *Traps.* A stone crab trap used by or possessed on board a vessel with a Federal commercial vessel permit for stone crab must have a valid annual trap tag issued by the RA attached.

(2) *Trap buoys.* A buoy must be attached to each stone crab trap or at each end of a string of traps. Each buoy must display the official number and the color code assigned by the RA so as to be easily distinguished, located, and identified.

(3) *Presumption of trap ownership.* A stone crab trap will be presumed to be the property of the most recently documented owner. This presumption will not apply to traps that are lost if the owner reports the loss within 15 days to the RA.

(4) *Unmarked traps or buoys.* An unmarked stone crab trap or a buoy deployed in the EEZ where such trap or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

[60 FR 13919, Mar. 15, 1995, as amended at 67 FR 61993, Oct. 3, 2002]

§ 654.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to display and maintain vessel and gear identification, as required by § 654.6.

(b) Possess a stone crab in the management area during the period specified in § 654.20(a).

(c) Possess a stone crab trap in the management area during the period specified in § 654.20(c).

(d) Remove from a stone crab in or from the management area, or possess in the management area, a claw that is less than the minimum size limit specified in § 654.21(a).

(e) Fail to return immediately to the water unharmed an egg-bearing stone crab, or strip eggs from or otherwise molest an egg-bearing stone crab; as specified in § 654.21(b).

(f) Hold a stone crab in or from the management area aboard a vessel other than as specified in § 654.21(c).

(g) Use or possess in the management area a stone crab trap that does not comply with the trap construction requirements as specified in § 654.22(a).

(h) Pull or tend a stone crab trap in the management area other than during daylight hours, as specified in § 654.22(b).

(i) Willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area, as specified in § 654.22(c).

(j) Trawl in a closed area or during a closed season, as specified in §§ 654.23 or 654.24, or as may be implemented under § 654.25(b).

(k) Place a stone crab trap in a closed area or during a closed season, as specified in § 654.24, or as may be implemented under § 654.25(b).

(l) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 654.25(a).

(m) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of stone crab.

(n) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson-Stevens Act.

(o) Fish for any species or anchor a fishing vessel in a marine reserve as specified in § 654.28.

(p) Except for a person who is in compliance with the FFWCC stone crab trap limitation program, possess or use a stone crab trap, possess more than 1 gallon (4.5 L) of stone crab claws, or sell stone crab claws in or from the management area without a commercial vessel permit as specified in § 654.4(a).

(q) Falsify information on an application for a commercial vessel permit or submitted in support of such application as specified in § 654.4(a)(1) or (2).

[60 FR 13919, Mar. 15, 1995, as amended at 67 FR 47469, July 19, 2002; 67 FR 61993, Oct. 3, 2002]

§ 654.8 Facilitation of enforcement.

See § 600.730 of this chapter.

[67 FR 61993, Oct. 3, 2002]

§ 654.9 Penalties.

See § 600.735 of this chapter.

[67 FR 61993, Oct. 3, 2002]

Subpart B—Management Measures

§ 654.20 Seasons.

(a) *Closed season*. No person may possess a stone crab in the management area from 12:01 a.m., local time, May 16, through 12 p.m. midnight, local time, October 14, each year. Holding a stone crab in a trap in the water during a soak period or during a removal period (see paragraph (b) of this section), or during any extension thereto, is not deemed possession, provided that, if the trap is removed from the water during such period, such crab is returned immediately to the water with its claws unharvested.

(b) *Placement of traps*—(1) *Prior to the fishing season*. The period of October 5 through October 14 is established as a trap soak period. A stone crab trap may be placed in the management area not earlier than 1 hour before sunrise on October 5.

(2) *After the fishing season*. The period of May 16 through May 20 is established as a trap removal period. A stone crab trap must be removed from the management area not later than 1 hour after sunset on May 20, unless an extension to the removal period is granted under paragraph (b)(2)(i) of this section and the extension authorization is carried aboard the fishing vessel as specified in paragraph (b)(2)(ii) of this section.

(i) An extension of the removal period may be granted by Florida in accordance with Rule 46–13.002(2)(b), Florida Administrative Code, in effect as of April 14, 1995. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the office of the Regional Administrator, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(ii) The extension authorization must be carried aboard the fishing vessel. The operator of a fishing vessel must present the authorization for inspection upon request of an authorized officer.

(c) *Possession of stone crab traps*. A stone crab trap may not be possessed in the management area from the end of the trap removal period, or an extension thereto, to the beginning of the trap soak period, as specified in paragraph (b) of this section. A stone crab trap, float, or rope in the management area during this period will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties.

[60 FR 13919, Mar. 15, 1995, as amended at 67 FR 61993, Oct. 3, 2002; 69 FR 18803, Apr. 9, 2004]

§ 654.21 Harvest limitations.

(a) *Claw size*. No person may remove from a stone crab in or from the management area, or possess in the management area, a claw with a propodus measuring less than 2.75 inches (7.0 cm), measured in a straight line from the elbow to the tip of the lower immovable finger. The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended. (See Appendix A, Figure 1, of this part.)

(b) *Egg-bearing stone crabs*. An egg-bearing stone crab in or from the management area must be returned immediately to the water unharmed—without removal of a claw. An egg-bearing stone crab may not be stripped of its eggs or otherwise molested.

(c) *Holding stone crabs.* A live stone crab in or from the management area may be held aboard a vessel until such time as a legal-sized claw is removed, provided it is held in a container that is shaded from direct sunlight and it is wet with sea water as necessary to keep it in a damp condition. Containers holding stone crabs must be stacked in a manner that does not compress the crabs. A stone crab body from which a legal-sized claw has been removed must be returned to the sea before the vessel reaches shore or a port or dock.

§ 654.22 Gear restrictions.

(a) *Trap construction requirements.* No person fishing for stone crab may transport on the water or fish with any trap which does not meet the following requirements:

(1) Each trap must be constructed of wood, plastic, or wire.

(2) A trap may be no larger in dimension than 24 by 24 by 24 inches (61 by 61 by 61 cm) or 8.0 ft^3 (0.23 m^3).

(3) The throats (entrances) to all wood and plastic traps must be located on the top horizontal section of the trap. If the throat is longer in one dimension, the throat size in the longer dimension must not exceed 5½ inches (14.0 cm) and in the shorter dimension must not exceed 3½ inches (9.0 cm). If the throat is round, the throat size must not exceed 5 inches (12.7 cm) in diameter.

(4) In any wire trap used to harvest stone crabs, each throat must be horizontally oriented. The width of the opening where the throat meets the vertical wall of the trap and the opening of the throat at its farthest point from the vertical wall, inside the trap, must be greater than the height of any such opening. No such throat may extend farther than 6 inches (15.2 cm) into the inside of any trap, measured from where the throat opening meets the vertical wall of the trap to the throat opening at its farthest point from the vertical wall, inside the trap.

(5) A wire trap must have at least three unobstructed escape rings installed, each with a minimum inside diameter of 2⅜ inches (6.0 cm). One such escape ring must be located on a vertical outer surface adjacent to each crab retaining chamber.

(6) A plastic or wire trap must have a degradable panel.

(i) A plastic trap will be considered to have degradable panel if it contains at least one sidewall with a rectangular opening no smaller in either dimension than that of the throat. This opening may be obstructed only with a cypress or untreated pine slat or slats no thicker than ¾ inch (1.9 cm) such that when the slat degrades, the opening in the sidewall of the trap will no longer be obstructed.

(ii) A wire trap will be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(A) The trap lid tie-down strap is secured to the trap at one end by a single loop of untreated jute twine, a corrodible loop composed of non-coated steel wire measuring 24 gauge or thinner, or an untreated pine dowel no larger than 2 inches (5.1 cm) in length by ⅜ inch (0.95 cm) in diameter. The trap lid must be secured so that when the jute, corrodible loop, or pine dowel degrades, the lid will no longer be securely closed.

(B) The trap contains at least one sidewall with a vertical rectangular opening no smaller in either dimension than 6 inches (15.2 cm) in height by 3 inches (7.6 cm) in width. This opening may be laced, sewn, or otherwise obstructed by—

(*1*) A single length of untreated jute twine knotted only at each end and not tied or looped more than once around a single mesh bar;

(*2*) Untreated pine slat(s) no thicker than ⅜ inch (0.95 cm);

(*3*) Non-coated steel wire measuring 24 gauge or thinner;

(*4*) A panel of ferrous single-dipped galvanized wire mesh made of 24 gauge or thinner wire; or

(*5*) A rectangular panel made of any material, fastened to the trap at each of the four corners of the rectangle by rings made of non-coated 24 gauge or thinner wire or single strands of untreated jute twine. When the jute, untreated pine slat(s), non-coated steel wire, wire mesh panel, or corner fasteners degrade, the opening in the sidewall of the trap must no longer be obstructed.

(b) *Daylight hours*. A stone crab trap in the management area may be pulled or tended during daylight hours only—that is, from 1 hour before sunrise to 1 hour after sunset.

(c) *Gear belonging to others*. No fisherman may willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area without the prior written consent of that fisherman.

[60 FR 13919, Mar. 15, 1995, as amended at 65 FR 31835, May 19, 2000]

§ 654.23 Southwest Florida seasonal trawl closure.

From January 1 to 1 hour after sunset (local time) May 20, each year, the area described in this section is closed to trawling, including trawling for live bait. The area is that part of the management area shoreward of a line connecting the following points (see Appendix A, Figure 2, of this part):

Point	North Latitude	West Longitude
B[1]	26°16′	81°58.5′
C	26°00′	82°04′
D	25°09′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

§ 654.24 Shrimp/stone crab separation zones.

Five zones are established in the management area and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. The zones are as shown in Appendix A, Figure 3, of this part. Although Zone II is entirely within Florida's waters, it is included in this section and Appendix A, Figure 3, of this part for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph and shown in Appendix A, Figure 3, of this part are as follows (loran readings are unofficial and are included only for the convenience of fishermen):

Point	North latitude	West longitude	Loran Chain 7980			
			W	X	Y	Z
A	28°59′30″	82°45′36″	14416.5	31409.4	45259.1	62895.3
B	28°59′30″	83°00′10″	14396.0	31386.3	45376.8	63000.0
C	28°26′01″	82°59′47″	14301.5	31205.9	45103.2	63000.0
D	28°26′01″	82°56′54″	14307.0	31212.2	45080.0	62981.3
E	28°41′39″	82°55′25″	14353.7	31300.2	45193.9	62970.0
F	28°41′39″	82°56′09″	14352.4	31298.6	45199.4	62975.0
G	28°48′56″	82°56′19″	14372.6	31337.2	45260.0	62975.0
H	28°53′51″	82°51′19″	14393.9	31371.8	45260.0	62938.7
I	28°54′43″	82°44′52″	(1)	(1)	(1)	(1)
J	28°51′09″	82°44′00″	(2)	(2)	(2)	(2)
K	28°50′59″	82°54′16″	14381.6	31351.8	45260.0	62960.0
L	28°41′39″	82°53′56″	14356.2	31303.0	45181.7	62960.0
M	28°41′39″	82°38′46″	(3)	(3)	(3)	(3)
N	28°41′39″	82°53′12″	14357.4	31304.4	45176.0	62955.0
O	28°30′51″	82°55′11″	14323.7	31242.4	45104.9	62970.0
P	28°40′00″	82°53′08″	14352.9	31295.7	45161.8	62955.0
Q	28°40′00″	82°47′58″	14361.3	31305.4	45120.0	62920.0
R	28°35′14″	82°47′47″	14348.6	31280.6	45080.0	62920.0
S	28°30′51″	82°52′55″	14327.7	31247.0	45086.6	62955.0
T	28°27′46″	82°55′09″	14315.2	31225.8	45080.0	62970.0
U	28°30′51″	82°52′09″	14329.1	31248.6	45080.0	62949.9

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(a) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ during the period October 5 through May 20, each year.

(b) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K,

L, and M, plus the shoreline between points J and M.

(c) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ during the period October 5 through May 20, each year.

(d) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(1) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ during the periods October 5 through December 1, and April 2 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone IV that is in the EEZ during the period December 2 through April 1, each year.

(e) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(1) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ during the periods October 5 through November 30, and March 16 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone V that it is in the EEZ during the period December 1 through March 15, each year.

(f) A stone crab trap, float, or rope in the management area during a period not authorized by this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.25 Prevention of gear conflicts.

(a) No person may knowingly place in the management area any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and limitations of the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Administrator may modify or establish separation zones for shrimp trawling and the use of fixed gear as may be necessary and appropriate to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

[60 FR 13919, Mar. 15, 1995, as amended at 67 FR 61993, Oct. 3, 2002]

§ 654.26 Adjustment of management measures.

In accordance with the procedures and limitations of the fishery management plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Administrator may establish or modify the following management measures: Limitations on the number of traps that may be fished by each vessel; construction characteristics of traps; gear and vessel identification requirements; gear that may be used or prohibited in a directed fishery; bycatch levels in non-directed fisheries; seasons; soak/removal periods and requirements for traps; use, possession and handling of stone crabs aboard vessels; and minimum legal sizes.

[60 FR 13919, Mar. 15, 1995, as amended at 67 FR 61993, Oct. 3, 2002]

§ 654.27 Specifically authorized activities.

The Regional Administrator may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

[60 FR 13919, Mar. 15, 1995, as amended at 67 FR 61993, Oct. 3, 2002]

§ 654.28 Tortugas marine reserves.

The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(a) *EEZ portion of Tortugas North*. The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00′ N. lat., 83°06′00′ W. long. to point B at 24°46′00′ N. lat., 83°06′00′ W. long. to point C at 24°46′00′ N. lat., 83°00′00′ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40′00′ N. lat., 83°06′00′ W. long.

(b) *Tortugas South*. The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00′	83°09′00′
B	24°33′00′	83°05′00′
C	24°18′00′	83°05′00′
D	24°18′00′	83°09′00′
A	24°33′00′	83°09′00′

[67 FR 47469, July 19, 2002]

APPENDIX A TO PART 654—FIGURES

Figure 1—Stone Crab Claw
Figure 2—Southwest Florida Seasonal Trawl Closure
Figure 3—Shrimp/Stone Crab Separation Zones

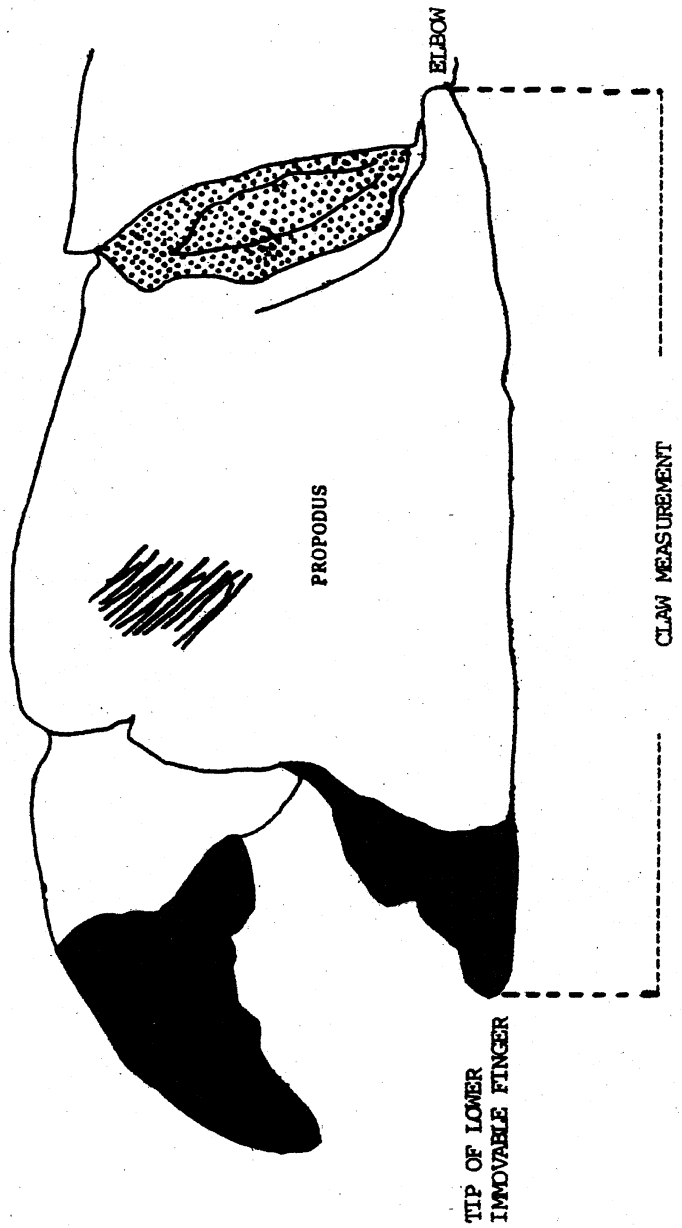

FIGURE 1. STONE CRAB CLAW

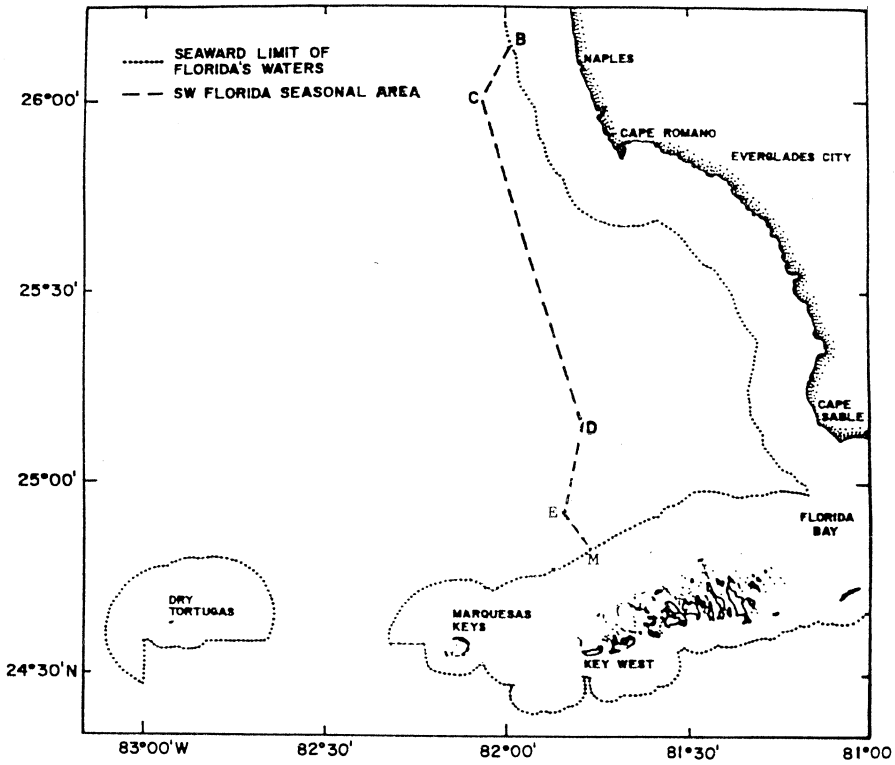

FIGURE 2. SOUTHWEST FLORIDA SEASONAL TRAWL CLOSURE

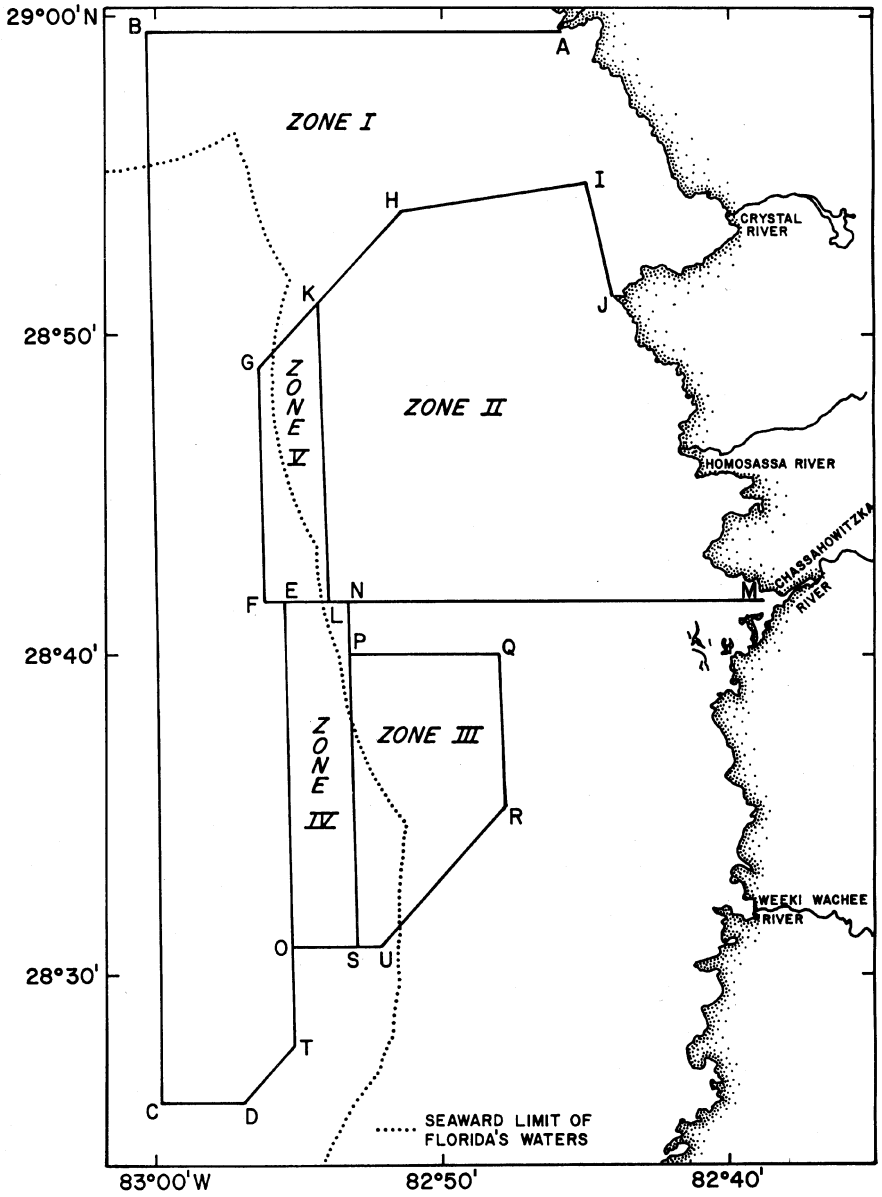

Figure 3. Shrimp/stone crab separation zones.

PARTS 655–659 [RESERVED]